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# PENSION BULLETIN

JANUARY, 2002 • VOLUME 11, ISSUE 1

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*The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.*

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## GENERAL ANNOUNCEMENTS

### Pension Division – Staff Changes

**Bradley Mockford** is the Executive Assistant to K. David Gordon, the newly appointed Deputy Superintendent, Pensions. **Dean Therrien** assumes the role of Co-ordinator, Administrative and Support Services. **Marco Ciavatta** assumes the role of Compliance and Enforcement Officer, Filings. **Jason Gartshore** was appointed to the position of Compliance Assistant. **John Khing Shan, Marilyn Johnson** and **Pauline Stevens** assume the role of Assistant Pension Officers. **Carol Nitkin** has assumed the role of Pension Analyst. **Dorothy Cottrell** joins the Pension Policy Unit.

### Contacts for Plan Specific Enquiries

Contact Name	Title	Phone Number	Allocation Alpha Range
Jaan Pringi	Sr. Pension Officer	416-226-7826	
Gulnar Chandani	Pension Officer	416-226-7770	#'s - Associated
Penny McIlraith	Pension Officer	416-226-7822	Associates - Bulk
Tim Thomson	Pension Officer	416-226-7829	Bull - Cem
Irene Mook-Sang	Pension Officer	416-226-7824	Cen - Cz
Kathy Carmosino	Pension Officer	416-226-7823	I - King
Preethi Anthonypillai	Pension Officer	416-226-7812	Kinh - Mark
Gino Marandola	Sr. Pension Officer	416-226-7820	
Calvin Andrews	Pension Officer	416-226-7768	Gko - H
Jeff Chuchman	Pension Officer	416-226-7807	D - Em
John Graham	Pension Officer	416-226-7774	Marl - Nes
Julina Lam	Pension Officer	416-226-7815	Net - Pep
Anna Vani	Pension Officer	416-226-7833	Peq - Rob
Rosemin Jiwa Jutha	Sr. Pension Officer	416-226-7816	
Chantal Laurin	Pension Officer	416-226-7808	En - Gkn
Peter Dunlop	Pension Officer	416-226-7860	Roc - Sons
Hae-Jin Kim	Pension Officer	416-226-7876	Sont - The Drop
David Allan	Pension Officer	416-226-7803	The Droq - Unicorp
Leonard Peter	Pension Officer	416-226-7855	Unicorp - Z

**FSCO Pension Advisory Committees - Membership as at November 2001**Accounting and Assurance Advisory Committee

Besler, Jason  
Cassidy, Jim  
Eigl, Charlie **(Vice Chair)**  
Finn, Mary Ann  
Holland, Marie  
Hunter, Don  
Koehli, Ron  
Racanelli, Nick  
Turner, Eric  
Wade, Jack  
Walker, Albert  
Wilkinson, Don **(Chair)**

Actuarial Advisory Committee

Bicknell, Arthur  
Chang, Paul  
Cohen, Lorne **(Vice Chair)**  
DiRisio, Wendy  
Figueiredo, Karen **(Chair)**  
Hart, David  
Hutchinson, Laurie  
Levy, Thomas  
Pitcher, Clare  
Robertson, Marcus  
Rosenblat, Rob

Investment Advisory Committee

Bertram, Bob  
Franks, Jim  
Grantier, Bruce  
Kyle, Claire  
Marks, Josephine  
Mercier, Eileen  
Phelps, Tom **(Vice Chair)**  
Rafos, Bob  
Schaefer, Klaus  
Wirth, Alf **(Chair)**

Legal Advisory Committee

Bastein, Leigh Ann **(Chair)**  
Forgie, Jeremy  
Gold, Murray **(Vice Chair)**  
Hanson, Bernie  
Healy, Priscilla  
Lokan, Andrew  
Mark, Rose  
Nachshen, Gary  
O'Reilly, Hugh  
Picard, Mary  
Rienzo, Doug



## HEARINGS/COURT MATTERS

### Enforcement Matters

Charges laid under the *Pension Benefits Act*.

The information set out below is current to November 26, 2001.

#### i. Canadian Corporation Creation Center (CCCC)

Charges under the *Pension Benefits Act* were laid against the CCCC Pension Plan administrator, the individual trustees, CCCC and related companies on September 12, 2001. The charges relate to a scheme whereby locked in accounts were assigned to the defendant companies in return for the promise to extend a loan to the locked in account holder. A first appearance occurred on October 9, 2001. The matter has been put over to December 6, 2001.

#### ii. Daybar Industries Limited

Charges were laid in respect of two pension plans administered by Daybar. In one pension plan, Daybar was charged for failing to file the annual information returns and Pension Benefits Guarantee Fund (PBGF) assessments for two separate years and for failing to pay the filing fee associated with another annual information return. In respect of the other plan, Daybar was charged for failing to file an annual information return. On August 21, 2001, Daybar pleaded guilty to the charges. A total fine of \$3000 in respect of all charges was levied.

#### iii. Forum Corporation of Canada Ltd.

Charges were laid for failing to remit the filing fee in respect of an annual information return. On August 21, 2001, Forum pleaded guilty to the charges. A total fine of \$1000 in respect of all charges was levied.

#### iv. Student Federation of the University of Ottawa

Charges were laid for failing to file a financial statement. The first appearance on the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, the Student Federation of the University of Ottawa pleaded guilty to all charges and a total fine of \$500 was levied on all charges.

#### v. National Press Club of Canada

Charges were laid for failing to file financial statements. The first appearance for the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, the National Press Club of Canada pleaded guilty to all charges and a total fine of \$3000 was levied on all charges.

#### vi. Visentin Steel Fabricators Ltd.

Charges were laid for failing to file annual information returns. The first appearance for the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, the matter was put over for a third appearance now scheduled for January 15, 2002.

#### vii. 9007-7876 Quebec Ltd.

Charges were laid for failing to file annual information returns, PBGF assessments, financial statements, and an actuarial report. The first appearance for the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, 9007-7876 Quebec Ltd. pleaded guilty to all charges and a total fine of \$5000 was levied on all charges.

### **viii. Kendan Manufacturing Limited**

Charges were laid for failing to file an annual information return and to pay the PBGF assessments for two consecutive years. The first appearance for the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, the matter was put over for a third appearance now scheduled for January 15, 2002.

### **Court Matters**

The information set out below is current to November 26, 2001.

#### **i. Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration Number 1062363 (the "CCCC Plan")**

FSCO is intervening in a proceeding before the Québec Superior Court for a judgement regarding the ownership of funds contained in certain bank accounts held at a Montreal branch of the National Bank of Greece (Canada). The basis for FSCO's intervention is that the accounts contain funds that are attributable to the CCCC Pension Plan. Effective August 3, 2001, the Deputy Superintendent, Pensions, is acting as administrator of the CCCC Pension Plan. On October 19, 2001, the Court granted FSCO's request for intervener status. In addition, the Court granted FSCO's separate motion for seizure before judgement freezing the funds in the accounts.

#### **ii. Retirement Income Plan Salaried Employees of Weavexx Corp., Registration Number 264663 (the "Weavexx Plan")**

On May 30, 2000, the Superior Court of Justice, Ontario Divisional Court, granted an application for judicial review brought by a group of former members of the Weavexx Plan to set aside the Superintendent of Pensions' August 1997 consent to a transfer of assets from the Weavexx Plan to the BTR Pension Plan for Canadian Employees. The decision of the Court was based on the conclusion that the Superintendent had exceeded his jurisdiction in failing to consider the issues of surplus, trust and a requested partial wind up of the Weavexx Plan.



An addendum issued by the Court on November 16, 2000, stated that the return of assets to the Weavexx Plan was not to be the subject of a Financial Services Tribunal hearing and that any decision made by the Superintendent of Financial Services in respect of the requested partial wind up was to be referred to the Tribunal for a hearing. The Court also awarded the applicants \$54,294.06 in costs. The Ontario Court of Appeal granted both the Superintendent and BTR Inc. leave to appeal these decisions on February 26, 2001. Both appeals were heard on November 19, 2001. The Court reserved its decision in both appeals.

### **iii. Colgate-Palmolive Canada Inc. Pension Plan for Salaried and Non- Union Hourly Employees**

On November 29, 2000, the Superior Court of Justice, Ontario Divisional Court, dismissed an application for judicial review brought by a group of former members of the Colgate-Palmolive Canada Inc. Pension Plan for Salaried and Non-Union Hourly Employees, who wanted to set aside the Superintendent of Pensions' December 1995 consent to a transfer of assets from the Bristol-Myers Canada Inc. Retirement Income Plan to the Colgate Plan. The applicants also wanted the Superintendent's August 1994 approval of a partial wind up report filed by the Colgate Plan set aside.

The Court found that the applicants, as members of the importing pension plan, had no right to object to the transfer; any right to object would have been exercised when the amendment to the Colgate Plan respecting the transfer was filed. The Court also found that there was no evidence to support a partial wind up involving additional former members of the Colgate Plan.

On February 26, 2001, the Ontario Court of Appeal granted leave to appeal to the applicants. The Court ordered that this appeal be heard together with the Weavexx appeal. Both appeals were heard on November 19, 2001. The Court reserved its decision in both appeals.

### **iv. Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230, FST File P0013-1998**

On November 30, 1998, the Superintendent issued a Notice of Proposal to Refuse to Approve a Partial Wind Up Report filed by Monsanto in respect of a 1997 plant closure. The grounds for the refusal were: (a) the wind up report did not deal with the surplus distribution on partial wind up; (b) the payment of benefit enhancements on wind up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) the wind up report provided that the funds relating to benefits of those in the partial wind up group were to remain in the pension plan's fund rather than being distributed by way of a purchase of annuities.

On December 31, 1998, Monsanto Canada Inc. ("Monsanto") requested a hearing before the Financial Services Tribunal in respect of the Notice of Proposal.

The hearing was held on January 10 - 12 and February 7 - 11, 2000. The Tribunal issued majority and minority Reasons dated April 14, 2000, which were published in Volume 9, Issue 2 of the Pension Bulletin. In the result, the Tribunal directed the Superintendent to approve the Partial Wind Up Report.



The decision of the Tribunal was appealed to the Superior Court of Justice, Ontario Divisional Court. On March 19, 2001, the Court allowed the appeal on the basis of its conclusion that the first ground set out in the Notice of Proposal ((a) above) was a proper basis for the Superintendent to refuse to approve the Partial Wind Up Report and that the Superintendent was entitled to rely on that ground. In this respect, it adopted the minority Reasons of the Tribunal and directed the Superintendent to carry out the Notice of Proposal to Refuse to Approve.

The Court found that the Financial Services Tribunal majority's interpretation of subsection 70(6) of the *Pension Benefits Act* was unreasonable. The Court also found that the Financial Services Tribunal majority's finding on legitimate expectation misinterpreted the legislation and was an error in law.

Monsanto, the Association of Canadian Pension Management, and the National Trust Company each sought leave to appeal this decision. On June 28, 2001, the Ontario Court of Appeal granted leave. The appeal has been scheduled for April 29 and 30, 2002.



## LEGISLATIVE CHANGES/REGULATORY POLICIES

Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

**SECTION:** Benefits

**INDEX NO.:** B100-851

**TITLE:** Joint and Survivor Pension Waived  
- PBA s. 44

**APPROVED BY:** Superintendent of Financial Services

**PUBLISHED:** FSCO website (December 2001)

**EFFECTIVE DATE:** January 1, 2002

**REPLACES:** B100-850

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This policy replaces B100-850 ("Survivor Benefit Waived - PBA, R.S.O. 1990, s. 44") as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997 Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

### **If a joint and survivor pension is waived, how should the pension amount payable to the former member be determined?**

Under section 44 of the PBA, a pension paid to a former member who has a spouse or same-sex partner on the date that payment of the first instalment of the pension is due must provide a survivor benefit upon the death of the former member or the spouse or same-sex partner, whichever occurs first, which is not less than 60% of the pension amount payable during their joint lives. This entitlement to receive a

pension in the form of a joint and survivor pension may be waived in accordance with section 46 of the PBA.

Where a joint and survivor pension is waived, the pension amount payable to the former member should not be less than the single life pension determined as if the former member does not have a spouse or same-sex partner.

Where a pension plan wishes to provide a greater amount, it must specifically provide for such in the plan text.



Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

SECTION:	Life Income Fund/Locked-In Retirement Account
INDEX NO.:	L050-658
TITLE:	2002 LIF Maximum Withdrawal Amount Table
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (December 2001)
EFFECTIVE DATE:	January 1, 2002

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

The attached table has been prepared by the Financial Services Commission of Ontario ("FSCO"). Additional copies of this table and copies of articles published by FSCO about the Ontario LIF are available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca), or may be picked up in person at the reception desk, 4th Floor, 5160 Yonge Street, North York, Ontario.

**Interest assumptions used in the table on next page:**

- (1) 6.00%, which represents the *greater* of the CANSIM B14013 rate for November 2001 (5.66%) and 6.00% for the first 15 years, and

- (2) 6.00% for the years remaining to the end of the year in which the LIF owner attains 90 years of age. (Assumption to age 90 is for the purpose of maximum withdrawal calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the LIF owner attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.

**2002 Maximum Annual Withdrawal Amount Table for an Ontario Life Income Fund (LIF)**

Age at January 12, 2002	New Age During 2002	Years to End of Year Age 90 is Attained	Maximum Withdrawal as a Percentage of the LIF Balance as at January 1, 2002*
48	49	42	6.19655%
49	50	41	6.23197%
50	51	40	6.26996%
51	52	39	6.31073%
52	53	38	6.35454%
53	54	37	6.40164%
54	55	36	6.45234%
55	56	35	6.50697%
56	57	34	6.56589%
57	58	33	6.62952%
58	59	32	6.69833%
59	60	31	6.77285%
60	61	30	6.85367%
61	62	29	6.94147%
62	63	28	7.03703%
63	64	27	7.14124%
64	65	26	7.25513%
65	66	25	7.37988%
66	67	24	7.51689%
67	68	23	7.66778%
68	69	22	7.83449%
69	70	21	8.01930%
70	71	20	8.22496%
71	72	19	8.45480%
72	73	18	8.71288%
73	74	17	9.00423%
74	75	16	9.33511%
75	76	15	9.71347%
76	77	14	10.14952%
77	78	13	10.65661%
78	79	12	11.25255%
79	80	11	11.96160%

\* The maximum annual withdrawal amount percentage is calculated on the basis of a twelve-month fiscal year to December 31, 2002, using the interest assumptions above.



## SUPERINTENDENT OF FINANCIAL SERVICES

### Notices of Proposal to Make an Order

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, c. 28 (the "Act");

**AND IN THE MATTER OF** a Refusal by the Superintendent of Financial Services to make an Order under section 87 of the *Act* respecting a request by Jim MacKinnon relating to the **Labourers' Pension Fund of Central and Eastern Canada, Registration Number 573188** (the "Plan");

**TO:** **Jim MacKinnon**  
P.O. Box 354  
Thamesford, Ontario  
N0M 2M0

### Notice of Proposal to Refuse to Make an Order

**I PROPOSE TO REFUSE TO MAKE AN ORDER** under section 87 of the *Act*, with respect to Mr. MacKinnon's claim that he is entitled to receive a "Thirty and Out" pension benefit from the Plan.

### **I PROPOSE TO REFUSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. The Plan is a multi-employer defined benefit plan. It was established by way of a trust agreement dated February 23, 1972.
2. Mr. MacKinnon became a member of the Plan in November 1974. At that time, he was employed by the Electrical Power Sector Contractors' Association ("EPSCA"), which contributed to the Plan under the terms of a collective agreement between it and the Labourers' International Union of North America ("L.I.U.N.A."), Local 1059 ("Local 1059").
3. Mr. MacKinnon left his employment at EPSCA in July 1982. From August 1982 until the present, he has been employed as the Business Manager of Local 1059 of L.I.U.N.A. Local 1059 made pension contributions to the Plan on Mr. MacKinnon's behalf, until March 1, 1996.
4. After March 1, 1996, due to changes in the *Income Tax Act* and the fact that he was a member of another pension plan sponsored by the L.I.U.N.A., Local 1059 stopped contributing to the Plan on Mr. MacKinnon's behalf. As of March 1, 1996, Mr. MacKinnon had accumulated 30.25 years of credited service in the Plan.
5. Prior to 1997, the Plan had a "Thirty and Out" pension benefit. This benefit allowed a member to retire on a full pension after 30 years of credited service in the Plan, regardless of the member's age.
6. On March 12, 1997, Mr. MacKinnon applied for the "Thirty and Out" pension. He claims that he was entitled to receive the pension at that time, notwithstanding the fact that he continued, without interruption, in his employment as Business Manager of Local 1059.
7. Mr. MacKinnon claims he is entitled to the "Thirty and Out" pension from the Plan because, as of March 1, 1996, under the terms of the Plan, he is no longer an "employee" of Local 1059. He also claims he can no longer be considered "employed" (i.e. receiving "remuneration to which the pension plan is related") within the meaning of the *Act*.



8. The Plan has taken the position that Mr. MacKinnon is not entitled to a retirement pension because section 2.04(b) of the Plan provides that an employee in Mr. MacKinnon's situation can only cease participation in the Plan "on the day he terminates employment with an Employer". Since Mr. MacKinnon had not terminated his employment with his employer as of March 1, 1996, he remained a participant in the Plan and was not eligible to retire and receive a pension.
9. Section 38 of the *Act* provides that a person who is a member of a multi-employer pension plan is entitled to terminate his or her membership in the plan if no contributions are paid to the pension fund on his or her behalf for twenty-four consecutive months, or such shorter period of time as is specified in the pension plan.
10. Since no shorter time period is specified in the Plan, Mr. MacKinnon was entitled to terminate his membership in the Plan after the expiry of twenty-four months with no contributions paid on his behalf. Mr. MacKinnon's earliest termination date would thus be March 1, 1998.
11. Accordingly, under subsection 38(2) of the *Act*, Mr. MacKinnon would be deemed to have terminated his employment on March 1, 1998. He would be entitled to any pension or portability options available under the Plan or the *Act* at that time.
12. On July 1, 1997, the Plan was amended so as to eliminate the "Thirty and Out" retirement option. A further amendment provided for early retirement upon a member's attaining 55 years of age and having 30 years credited service. Mr. MacKinnon claims these amendments are not valid because of an alleged failure to comply with the notice requirements for adverse amendments set out in section 26 of the *Act*.
13. Subsection 26(4) of the *Act* provides, at paragraph (c), that the Superintendent need not require the transmittal of notices if the amendment is in respect of a multi-employer pension plan established pursuant to a collective agreement or trust agreement. Accordingly, the Plan's failure to transmit notice of the amendment does not constitute a contravention of the *Act* and does not invalidate the amendment in question.
14. Similarly, the amendment is not void under subsection 14(1) of the *Act* (for purporting to reduce the amount or commuted value of a pension benefit, deferred pension or ancillary benefit accrued prior to the date of the amendment) because the amendment in question is in respect of a multi-employer pension plan and subsection 14(2) of the *Act* provides that subsection (1) does not apply in respect of a multi-employer pension plan established pursuant to a collective agreement or trust agreement.
15. In March 1998, when Mr. MacKinnon may be deemed to have terminated his employment, the "Thirty and Out" retirement option was no longer available to him, as it had been validly eliminated by the Plan amendment of July 1, 1997.
16. In refusing to grant Mr. MacKinnon a "Thirty and Out" pension, the Plan administrators have administered the Plan in compliance with requirements of the *Act*, the Regulations, and the filed documents in respect of which the Superintendent of Financial Services (the "Superintendent") has issued a certificate of registration.



17. Subsection 87(2) of the *Act* allows the Superintendent to make an order only if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the regulations or the pension plan.

18. Such further and other grounds as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the “Tribunal”), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal to Refuse to Make an Order is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL TO REFUSE TO MAKE AN ORDER IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 20th day of June, 2001.

Dina Palozzi  
Chief Executive Officer and  
Superintendent of Financial Services

cc: Labourers’ Pension Fund of Central and  
Eastern Canada

Labourers’ International Union of North  
America, Local 1059

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28 (the “Act”);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration Number 0937458** (the “Pension Plan”);

**TO:** **Morneau Sobeco**  
1500 Don Mills Road  
Suite 500  
Toronto, Ontario  
M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Agent for Deloitte & Touche Inc. in its capacity as Administrator of the Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees;**

**AND TO:** **Royal Oak Mines Inc.**  
P.O. Box 2010  
Timmins, Ontario  
P4N 7X7

**Attention:** Mrs. Rachel A. Pineault  
Corporate Manager,  
Pensions and Benefits  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
145 King Street West  
Toronto, Ontario  
M5H 1V8

**Attention:** Ms. Louisa Blunda  
**Interim Receiver and Manager,**  
**Van Dresser Limited**

### **Notice of Proposal to Make a Declaration**

#### **WHEREAS:**

1. The Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration No. 0937458 (the “Pension Plan”), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the “Act”); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the *Act* or the regulations made thereunder; and
3. The Pension Plan Administrator has filed a request with the Superintendent of Financial Services for the Superintendent to issue an order under Section 69 of the *Pension Benefits Act* to wind up the Pension Plan effective February 14, 2000.
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the “Administrator”) of the Pension Plan on October 13, 1999.

**I PROPOSE TO CONSIDER TO MAKE A DECLARATION**, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The actuarial report prepared as of March 31, 1999, indicated that the Pension Plan was underfunded on a solvency basis as at that date in that the total value of its assets was not sufficient to pay the total actuarial



value of benefits to that date. Furthermore, the March 31, 2001 cost certificate filed by the Administrator confirms that there have not been any events that would lead to the elimination of the deficit reported by the March 31, 1999 actuarial valuation.

2. PricewaterhouseCoopers Inc. was appointed Interim Receiver and Manager of Royal Oak Mines Inc. on April 16, 1999.
3. The Interim Receiver and Manager of Royal Oak Mines Inc. has advised the Administrator that there are no assets available from the estate of Royal Oak Mines Inc. for the Pension Plan.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

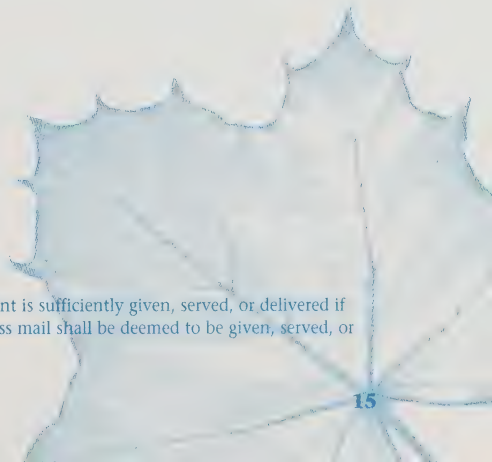
**Attention:** The Registrar.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 20th day of June, 2001.

Dina Palozzi  
Chief Executive Officer and  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration Number 0937466** (the "Pension Plan");

**TO:** **Morneau Sobeco**  
1500 Don Mills Road  
Suite 500  
Toronto, Ontario  
M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Agent for Deloitte & Touche Inc. in its capacity as Administrator of the Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees;**

**AND TO:** **Royal Oak Mines Inc.**  
P.O. Box 2010  
Timmins, Ontario  
P4N 7X7

**Attention:** Mrs. Rachel A. Pineault  
Corporate Manager,  
Pensions and Benefits  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
145 King Street West  
Toronto, Ontario  
M5H 1V8

**Attention:** Ms. Louisa Blunda  
**Interim Receiver and Manager,  
Van Dresser Limited**

**AND TO:** **United Steelworkers of America**  
Local 4440  
57 Mountjoy Street South  
Timmins, Ontario  
P4N 1S7

**Attention:** Mr. Rick Chopp  
President  
**Union**

### **Notice of Proposal to Make a Declaration**

#### **WHEREAS:**

1. The Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration No. 0937466 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan Administrator has filed a request with the Superintendent of Financial Services for the Superintendent to issue an order under Section 69 of the *Pension Benefits Act* to wind up the Pension Plan effective December 31, 1999.
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on October 13, 1999.



**I PROPOSE TO CONSIDER TO MAKE A DECLARATION** pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Pension Plan **FOR THE FOLLOWING REASONS:**

1. The actuarial report prepared as of March 31, 1999, indicated that the Pension Plan was underfunded on a solvency basis as at that date in that the total value of its assets was not sufficient to pay the total actuarial value of benefits to that date. Furthermore, the February 28, 2001 cost certificate filed by the Administrator confirms that there have not been any events that would lead to the elimination of the deficit reported by the March 31, 1999 actuarial valuation.
2. PricewaterhouseCoopers Inc. was appointed Interim Receiver and Manager of Royal Oak Mines Inc. on April 16, 1999.
3. The Interim Receiver and Manager of Royal Oak Mines Inc. has advised the Administrator that there are no assets available from the estate of Royal Oak Mines Inc. for the Pension Plan.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 20th day of June, 2001.

Dina Palozzi  
Chief Executive Officer and  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the “*Act*”);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Locally Engaged Employees of the New Zealand Government in Canada, Registration Number 338970**;

**TO:** **Her Majesty The Queen in Right of New Zealand**  
New Zealand High Commission  
Suite 727, 99 Bank Street  
Ottawa, Ontario  
K1P 6G3

**Attention:** Wade Armstrong  
High Commissioner  
**Applicant and Employer**

### Notice of Proposal

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Pension Plan for Locally Engaged Employees of the New Zealand Government in Canada, Registration No. 338970 (the “*Plan*”), to Her Majesty the Queen in Right of New Zealand in the amount of \$544,701 as at May 1, 2000, adjusted for investment earnings thereon to the date of payment and adjusted for legal, actuarial and administrative expenses.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits and other payments (including those pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) to which the members, former members and any other persons so entitled to such payments

have been paid, purchased or otherwise provided for.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Her Majesty the Queen in Right of New Zealand is the employer as defined in the Plan (the “Employer”).
2. The Plan was wound up, effective May 1, 2000.
3. As at May 1, 2000, the surplus in the Plan was estimated at \$864,606.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the members and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed:
  - a) 63.00015% to the Employer; and
  - b) 36.99985% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 63.00015% of the surplus in the Plan (after adding investment earnings and deducting of the expenses related to the wind up of the Plan.)
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 26th day of June, 2001.

Dina Palozzi

Chief Executive Officer and  
Superintendent of Financial Services

cc: Dany Mathieu, Hicks Morley Hamilton  
Stewart Storie LLP

Rosemary Patterson, New Zealand High  
Commission

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the *Act* consenting to a payment out of the **Retirement Benefit Pension Plan for Members of Local 1804-I.A.M. of the Weatherhead Plant of Dana Canada Inc., Registration Number 0311845**;

**TO:** **Dana Canada Inc.**  
P.O. Box 3029  
St. Catharines, Ontario  
L2R 7K9

**Attention:** William A. Jocsak  
Director, Benefits Administration  
**Applicant and Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the *Act*, consenting to the payment out of The Retirement Benefit Pension Plan for Members of Local 1804-I.A.M. of the Weatherhead Plant of Dana Canada Inc., Registration No. 0311845 (the "Plan"), to Dana Canada Inc. in the amount of \$13,193.78.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Dana Canada is the employer as defined in the Plan (the "Employer").
2. The Employer made contributions to the fund of \$13,193.78 in the month of January 2001, from its general revenue instead of from the Plan's surplus assets.
3. The Plan is in a surplus position. The most recent Actuarial Valuation Report, which includes the period under question,

stipulates that payments should be made from the Plan's surplus assets.

4. The Plan provides that the Company may apply any excess assets of the pension fund towards the Company's obligations to contribute into the Plan.
5. The pension fund carrier has attested that the contributions were made from the Employer's general assets and should have been made from the Plan's surplus assets.
6. The Employer has applied, pursuant to subsection 78(4) of the *Act*, for consent of the Superintendent of Financial Services to the payment of \$13,193.78.
7. The application appears to comply with subsection 78(4) of the *Act*.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**



DATED at North York, Ontario, this 28th day of  
June, 2001.  
Dina Palozzi  
Chief Executive Officer and  
Superintendent of Financial Services  
cc: Waheda Alli, The Standard Life Assurance  
Company

'NOTE - PURSUANT to section 112 of the Act any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28, respecting the **Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited, Registration Number 0315176** (the "Pension Plan");

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto, Ontario  
M5H 1B6

**Attention:** Lawrence A. Contant  
**Administrator of the Pension Plan**

**AND TO:** **Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited**  
75 Milner Avenue  
Scarborough, Ontario  
M1S 3R7

**Attention:** T. A. Ronaldson  
**Employer**

### **Notice of Proposal to Make a Declaration**

#### **WHEREAS:**

1. The Retirement Benefit Plan for the Employees of Norman Wade Company

Limited, Techniprint Services Limited and Norman Wade Management Limited (the "Pension Plan"), Registration No. 0315176, is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and

2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. Pension Plan was wound up effective May 1, 1998; and
4. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Pension Plan on June 15, 1998;

**I PROPOSE TO CONSIDER TO MAKE A DECLARATION**, pursuant to section 83 of the Act, that the Guarantee Fund applies to the Pension Plan **FOR THE FOLLOWING REASONS:**

1. The Wind Up Report filed by the Administrator indicates an estimated funding deficiency of \$199,252 as at April 1, 2000, with respect to Ontario members, before deduction of wind up costs.
2. On May 1, 1998, Norman Wade Company Limited was assigned into bankruptcy, and the affiliates it operated, namely Techniprint Services Limited and Norman Wade Management Limited, ceased operations on the same day.
3. The trustee in bankruptcy of Norman Wade Company Limited has advised the Administrator that there are no funds available from the estate of the Company to pay to the Pension Plan.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 6th day of July, 2001.

Dina Palozzi  
Chief Executive Officer and  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Hudson Bay Diecasting Limited Salaried Employees Retirement Income Plan, Registration Number 0380170**;

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto, Ontario  
M5H 1B6

**Attention:** Mr. David R. Kearney  
**Administrator**

**AND TO:** **Hudson Bay Diecasting Limited**  
230 Orenda Road  
Brampton, Ontario  
L6T 1E9

**Attention:** Mr. Dwight W. Rollins  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
Suite 1100  
One Robert Speck Parkway  
Mississauga, Ontario  
L4Z 3M3

**Attention:** Mr. Andrew Wilczynski  
**Trustee in Bankruptcy for Hudson Bay Diecasting Limited**

## **Notice of Proposal to Make a Declaration**

### **WHEREAS:**

1. The Hudson Bay Diecasting Limited Salaried Employees Retirement Income Plan, Registration No. 380170 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on January 17, 1996; and
4. The Superintendent of Pensions issued an Order that the Plan be wound up effective September 7, 1995; and
5. The Administrator filed a wind up report for approval by the Superintendent of Financial Services; and
6. The Superintendent of Financial Services approved, on July 11, 2001, the distribution of the assets of the Plan as proposed under the wind up report, subject to any additional funding that may be required from the Guarantee Fund;

**I PROPOSE TO CONSIDER TO MAKE A DECLARATION**, pursuant to section 83 of the Act, that the Guarantee Fund applies to the Plan **FOR THE FOLLOWING REASONS:**

1. The funded ratio of the Plan has been estimated to be 67.7% with an estimated claim against the Guarantee Fund at wind up of \$118,028.00.



2. The employer, Hudson Bay Diecasting Limited, was assigned into bankruptcy on September 7, 1995.
3. The trustee in bankruptcy for Hudson Bay Diecasting Limited has advised the Administrator that there are no funds available from the estate of Hudson Bay Diecasting Limited to make payment to the Plan.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

DATED at North York, Ontario, this 23rd day of July, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

#### **YOU ARE ENTITLED TO A HEARING**

before the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

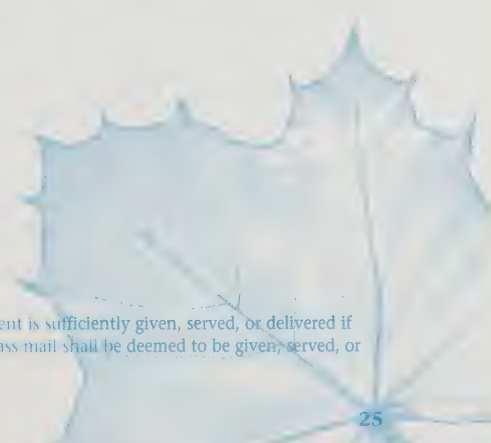
Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Hudson Bay Diecasting Limited Hourly Employees Retirement Income Plan, Registration Number 362178;**

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto, Ontario  
M5H 1B6

**Attention:** Mr. David R. Kearney  
**Administrator**

**AND TO:** **Hudson Bay Diecasting Limited**  
230 Orenda Road  
Brampton, Ontario  
L6T 1E9

**Attention:** Mr. Dwight W. Rollins  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
Suite 1100  
One Robert Speck Parkway  
Mississauga, Ontario  
L4Z 3M3

**Attention:** Mr. Andrew Wilczynski  
**Trustee in Bankruptcy for Hudson Bay Diecasting Limited**

**AND TO:** **National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW - Canada), Local 1285**  
205 Placer Court  
Toronto, Ontario  
M2H 3H9

**Attention:** Jeff Wareham, National Representative, Pension and Benefits Department  
**Union**

### **Notice of Proposal to Make a Declaration**

#### **WHEREAS:**

1. The Hudson Bay Diecasting Limited Hourly Employees Retirement Income Plan, Registration No. 362178 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on January 17, 1996.
4. The Superintendent of Pensions issued an Order that the Plan be wound up effective September 7, 1995; and
5. The Administrator filed a wind up report for approval by the Superintendent of Financial Services; and
6. The Superintendent of Financial Services



approved, on July 11, 2001, the distribution of the assets of the Plan as proposed under the wind up report, subject to any additional funding that may be required from the Guarantee Fund;

**I PROPOSE TO CONSIDER TO MAKE A DECLARATION**, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Plan **FOR THE FOLLOWING REASONS:**

1. The funded ratio of the Plan at wind up is estimated to be 78.9%, with an estimated claim against the Guarantee Fund at wind up of \$472,444.00.
2. The employer, Hudson Bay Diecasting Limited, was assigned into bankruptcy on September 7, 1995.
3. The trustee in bankruptcy for Hudson Bay Diecasting Limited has advised the Administrator that there are no funds available from the estate of Hudson Bay Diecasting Limited to make payment to the Plan.
4. The Administrator is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 23rd day of July, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services



<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration Number 1021005** (the "Pension Plan");

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto, Ontario  
M5H 1B6

**Attention:** Mr. Lawrence Contant  
**Administrator of the Pension Plan for Hourly Employees of Alumiprime Windows Limited**

**AND TO:** **Alumiprime Windows Limited**  
40 St. Regis Crescent North  
Downsview, Ontario  
M3J 1Z2

**Attention:** Martin Cash  
**Employer**

**AND TO:** **Shiner & Associates Inc.**  
30 Wertheim Court  
Suite 22  
Richmond Hill, Ontario  
L4B 1B9

**Attention:** Debbie Geller  
**Trustee in Bankruptcy, Alumiprime Windows Limited**

**AND TO:** **United Steelworkers of America**  
25 Cecil Street  
Toronto, Ontario  
M5T 1N1

**Attention:** Mohamed Baksh  
**Union**

### **Notice of Proposal to Make a Declaration**

#### **WHEREAS:**

1. The Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration No. 1021005 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective November 24, 1998; and
4. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Pension Plan on July 9, 1999.

#### **I PROPOSE TO CONSIDER TO MAKE A DECLARATION**, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Pension Plan **FOR THE FOLLOWING REASONS:**

1. The Extracts of the Actuarial Valuation Report filed by the Administrator indicate an estimated funding deficiency of \$177,100.00 as at November 24, 1998.



2. Shiner & Associates Inc. was appointed Trustee in Bankruptcy of Alumiprime Windows Limited on November 24, 1998.
3. The trustee in bankruptcy of Alumiprime Windows Limited has advised the Administrator that there are no funds available from the estate of Alumiprime Windows Limited for the Pension Plan.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 26th day of July, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** an application pursuant to s. 78(1) of the Act submitted by Stanley Canada Inc. in respect of the **Pension Plan for Designated Employees of Stanley Canada Inc., Registration Number 456897;**

**TO:** **William M. Mercer Limited**  
161 Bay Street  
P.O. Box 501  
Toronto, Ontario  
M5J 2S5

**Attention:** Ms. Melissa Merker  
**Agent for Applicant,**  
**Employer and Administrator**  
**of the Plan**

### **Notice of Proposal to Refuse to Consent To Application**

**I PROPOSE TO REFUSE TO CONSENT** to the Application for payment of surplus to the Employer dated April 1999, pursuant to s. 78(1) of the Act.

#### **I PROPOSE TO REFUSE TO CONSENT TO THE APPLICATION FOR THE FOLLOWING REASONS:**

1. In 1964, the corporate predecessor to the Employer established a defined contribution pension plan that required employer and employee contributions, named the Pension Plan, for Employees of Acmetrack Limited and a deferred profit sharing plan that only allowed employer contributions, named the Deferred Profit Sharing Plan, for Employees of Acmetrack Limited ("the Prior Plans"). Both employer and employee contributions were, under the provisions of the Prior Plans, paid into a trust fund. The trust

agreement relating to the trust fund did not reserve any power on behalf of the Employer or its predecessors to revoke the trust. In addition, the texts of the Prior Plans provided that the contributions to the Prior Plans were irrevocable and were to be used for the exclusive benefit of the members of the Prior Plans. Hence the contributions in the Prior Plans from the inception of the Prior Plan were subject to an irrevocable trust (express or implied) for the benefit of the members.

2. Effective January 1, 1982, the Pension Plan for Designated Employees of Stanley Canada Inc. ("the Plan"), that is the subject of this Notice of Proposal, was established. At all material times, the Plan was a non-contributory defined benefits pension plan. As a condition of becoming a member of the Plan, each member who joined the Plan was required to terminate his/her membership in the Prior Plans. The Plan provided that from the date on which the employee became a member of the Plan his/her entitlements under the Prior Plans would be transferred to and governed under the terms of the Plan. The three members of the Plan who were entitled to benefits under the Plan on the date of the wind up of the Plan, December 31, 1993, were members of the Prior Plans.
3. While the employee contributions made to the Pension Plan for Employees of Acmetrack Limited have remained segregated from the fund for the Plan, the employer contributions to the Prior Plans have been commingled with the monies in the fund for the Plan. However, these contributions have remained impressed with a trust in favour of these members.



4. The provisions of the Plan by which the Employer reserved to itself the power to amend and terminate the trust associated with the Plan and by which the Employer was given power to direct the distribution of the assets and which provide in effect that the Employer is entitled to the surplus on the wind up of the Plan, do not permit the Employer to revoke the trust associated with the employer contributions in the Prior Plans because they are the subject to an irrevocable trust set up in respect of the contributions to the prior Plans which trust was never legally and properly terminated in accordance with the requirements of the trust.
5. The trust agreement relating to the Prior Plans prevails over any inconsistent provisions in the text of the Plan which purport to give the Employer a right to all of the surplus that might exist on wind up of the Plan.
6. The Employer has not demonstrated that the Plan provides for the payment of surplus to the Employer on the wind up of the Plan.
7. Therefore the Employer has not demonstrated that it has complied with s. 79(3)(b) of the *Act*, which requires that the Plan provide for payment of surplus to the Employer on the wind up of the Plan.
8. Section 78(2) of the *Act* requires that an employer who applies to the Superintendent for consent to payment of surplus to the employer, must transmit notice of the application containing the prescribed information to, *inter alia*, each member and each former member of the plan and to any other individual who is receiving payments out of the pension fund. Section 28(5)(f) of Regulation 909, R.R.O. 1990, as amended ("the Regulation"), requires that notice under section 78(2) of the *Act* include "the contractual authority for surplus reversion." The Financial Services Commission of Ontario ("FSCO") policy S900-508 entitled "Application by an Employer for Payment of Surplus from a Wound-Up Plan" and applying to applications filed between July 1, 1998 and December 31, 2000, states that section 28(5)(f) of the Regulation requires a "full and complete disclosure of all provisions of the plan and trust documentation from inception that may be relevant in determining entitlement to the payment of surplus on wind up, including provisions in all current and prior plan texts, trust agreements... and other documents that may be relevant."
9. The notice of application provided by the Employer to the members, former members and other persons entitled to benefits under the Plan does not contain any reference to the provisions of the Prior Plans.
10. Therefore, the Employer has not demonstrated that it has complied with section 78(2) of the *Act*.
11. The consents filed from the members of the Plan who were members on the date of wind up are, therefore, invalid owing to the fact that the information provided in the Employer's notice of application did not meet the requirements of the Regulation.
12. Therefore the Employer has not demonstrated that it has complied with s. 8(1)(b)(ii) of the Regulation, which requires the agreement of at least two-thirds of the members of the Plan, if there is no collective bargaining agent representing the members, to the payment of surplus to the members.



13. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 26th day of July, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services, under  
s. 89(5) of the *Pension Benefits Act*, R.S.O. 1990,  
c. P.8, as amended (the "*Act*"), to Refuse to  
Make an Order pursuant to section 69 of the  
*Act*, respecting the **Philip Services Inc.  
Pension Plan for Intermetco Senior  
Management Employees, Registration  
Number 0687608** (the "*Plan*");

**TO:** **Doris M. Mair**  
27 Concession 5 East  
Waterdown, Ontario  
L0R 2H1

**Former Member**

**AND TO:** **Philip Services Inc.**  
100 King Street West  
P.O. Box 2440, LCD 1  
Hamilton, Ontario  
L8N 4J6

**Attention:** James O'Leary  
**Senior Vice President, Human  
Resources**

### **Notice of Proposal to Refuse to Make an Order**

**I PROPOSE TO REFUSE TO MAKE AN  
ORDER**, pursuant to s. 89(5), that the Philip  
Services Inc. Pension Plan for Intermetco Senior  
Management Employees, Registration No.  
0687608, be wound up in part pursuant to  
s. 69(1) of the *Act*.

### **I PROPOSE TO REFUSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. The predecessor to the Plan was established  
for certain senior management employees  
of Intermetco Limited ("Intermetco"). In  
1997, Philip Services Corp. acquired

Intermetco. Subsequently, Philip Services  
Corp. was purchased by Philip Services Inc.  
Prior to the acquisition by Philip Services  
Corp., Intermetco had commenced a reor-  
ganization within the meaning of that term  
in subsection 69 (1)(d) of the *Act*. The reor-  
ganization continued after the Philip  
Services Corp.'s acquisition of Intermetco.

2. As of December 31, 1997, there were five  
active members in the Plan. One member,  
Ms. Doris Mair, was terminated as a result  
of the reorganization undertaken prior to  
the sale. Ms. Mair was provided notice of  
her termination on or about March 6, 1997.  
At that time, she was advised that her salary  
and her pensionable service accrual would  
continue until August 31, 1999.
3. Three other members of the Plan ceased  
employment during the period of the reor-  
ganization, however, their employment was  
not terminated as a result of the reorganiza-  
tion. These other members of the Plan  
ceased employment as a result of attaining  
the normal or early retirement age under  
the Plan, voluntarily leaving employment  
and/or the expiration of the applicable  
employment contract.
4. Subsection 69 (1)(d) of the *Act* states that  
the Superintendent may require the wind-  
up of a pension plan in whole or in part, if  
"a significant number of the members of  
the pension plan cease to be employed by  
the employer as a result of the discontinu-  
ance of all or part of the business of the  
employer or as a result of the reorganization  
of the business of the employer." Only one  
member of the Plan ceased employment as  
a result of the reorganization. Therefore, a  
significant number of employees have not  
ceased employment as a result of the



reorganization of the business of the Employer.

5. Therefore, it has not been demonstrated that the criteria in subsection 69(1)(d) of the *Act* have been met, and there is no basis under that provision for the Superintendent to order a partial wind up of the Plan.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 26th day of July, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

cc:

**Stikeman Elliott**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario  
M5L 1B9

**Attention: Gary Nachshen**  
**Solicitors for the**  
**Administrator and Employer**

**John Lychy**  
1819 Barsuda Drive  
Mississauga, Ontario  
L5J 1V3

**Tom Parker**  
82 Lakeshore Road  
St. Catharines, Ontario  
L2N 2T4

**Edmund Fraser**  
2455 Butternut Cres.  
Burlington, Ontario  
L7M 3L8

**Former Members**

NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of **The Pension Plan for Non-Unionized Salaried Employees of Libbey Canada Inc., Registration Number 1001130;**

**TO:** **Mr. Frederick J. Thompson, F.S.A., F.C.I.A.**  
Thompson Actuarial Limited  
87 Wolverleigh Blvd.  
Toronto, Ontario  
M4J 1R8  
**Actuary for the Applicant and Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER**, under s. 78(1) of the *Act*, consenting to the payment out of the The Pension Plan for Non-Unionized Salaried Employees of Libbey Canada Inc., Registration No. 1001130, to Libbey Canada Inc., in the amount of approximately \$358,429 as at December 31, 2000, plus investment earnings thereon to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that the administrator of the pension plan has paid out all benefits and other payments, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the partial termination of the pension plan effective May 31, 1999.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Libbey Canada Inc. is the employer as defined in the Plan.
2. The Plan was partially wound up, effective May 31, 1999.
3. As at May 31, 1999, the surplus in the Plan attributable to the members affected by the partial wind up and former members was estimated at \$380,890, which has grown to \$543,075, as at December 31, 2000.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The Application discloses that by written agreement made by the Employer, and 83% of the members affected by the partial wind up, and 69% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed:
  - a) 66% to the Employer; and
  - b) 34% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 66% of the surplus in the Plan (after adding 66% of investment earnings and deducting 66% of the expenses related to the partial wind up of the Plan).
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 31st day of July, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services  
cc: Nazim Virani, Libbey Canada Inc.

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "*Act*"), as amended;  
**AND IN THE MATTER OF** an Amendment effective January 1, 2000, to the **Pension Plan for Employees of Engel Canada Inc., Registration Number 446393** (the "*Plan*");

**TO:** **Engel Canada Inc.**  
545 Elmira Road  
Guelph, Ontario  
N1K 1C2

**Attention:** Mr. Bill Rowe  
**Human Resources Manager  
Administrator and Employer**

### **Notice of Proposal to Refuse to Register an Amendment**

**I PROPOSE TO REFUSE TO REGISTER AN AMENDMENT**, effective January 1, 2000, to the Pension Plan for Employees of Engel Canada Inc., Registration No. 446393 (the "*Plan*").

### **I PROPOSE TO REFUSE TO MAKE THIS REFUSAL FOR THE FOLLOWING REASONS:**

1. The Plan is a defined contribution pension plan. On or about September 29, 1999, the Board of Directors for the Employer passed a resolution approving Amendment Number 4 to the Plan (the "*Amendment*") effective January 1, 2000. The Amendment modifies the Plan to eliminate required employee contributions and institutes employer contributions calculated on the basis of the amount of employee contributions to a separate Group Registered Retirement Savings Plan. In addition, the Amendment purports to reclassify all required member contributions made prior to January 1, 2000, as voluntary contributions.
2. Subsection 18(1)(d) of the *Act* permits the Superintendent to refuse to register an amendment "if the amendment is void or if the pension plan with the amendment would cease to comply with this *Act* and the regulations."
3. Subsection 63(1) of the *Act* states that no member or former member is entitled to a refund of contributions from a pension plan. However, subsection 63(2) specifically permits the refund of additional voluntary contributions. Notwithstanding subsection 63(1), subsection 63(7) states that contributions may be refunded with the consent of the Superintendent. Subsection 63(8) states that such consent may be provided if the pension plan provides for the refund "and the employer has assumed responsibility for funding all pension benefits associated with the contributions."
4. The Financial Services Commission of Ontario ("FSCO") policy R400 - 101, entitled "Application for Refund to Plan Members or Former Members," states that where a plan has been amended to deem required contributions to be additional voluntary contributions, the requirements of subsection 63(8) will apply.
5. Required contributions that are subsequently deemed to be additional voluntary contributions through an amendment to the plan, are not additional voluntary contributions within the meaning of the *Act*. Section 1 defines additional voluntary contributions as contribution to the pension plan beyond any amount that the member is required to contribute and does not include a contribution in relation to which the employer is required to make a concurrent additional contribution to the



pension fund. The contributions that are the subject of the Amendment were required contributions under section 4 of the Plan at the time that they were made. In addition, the employer's contribution, under section 4 of the Plan, was calculated as a prescribed percentage of the employee's contribution and therefore is a contribution in relation to which the employer was required to make a concurrent additional contribution. As such, subsection 63(2) of the *Act* does not apply to the Amendment and the provisions of subsection 63(8) are applicable.

6. The Employer takes the position that it will not assume responsibility for funding all pension benefits associated with the deemed additional voluntary contributions. The Amendment, therefore, does not comply with subsection 63(8) of the *Act*. I therefore propose to refuse to register the Amendment under subsection 18(1)(d) of the *Act* because the Plan with the Amendment would cease to comply with the *Act*, specifically section 63 of the *Act*.
7. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon

Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

cc:

**Ian Bedford, Wayne Cavasin,  
Joe Kuzel, John Ness and  
Bill Rowe**

545 Elmira Road  
Guelph, Ontario  
N1K 1C2

**Engel Canada Pension  
Committee Members**

**Robertson Eadie & Associates**  
407 Speers Road, Suite 211  
Oakville, Ontario  
L6K 3T5

**Attention:** Mr. Stephen Eadie  
**Actuary for the  
Administrator and Employer**

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Revised Pension Plan for  
Hourly Rated Employees of Marsh  
Engineering Ltd., Registration Number  
384313;**

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto, Ontario  
M5H 1B6

**Attention:** Lawrence A. Contant  
Manager  
**Administrator**

**AND TO:** **Marsh Engineering Ltd.**  
118 West Street  
Port Colborne, Ontario  
L3K 4C9

**Attention:** Charlotte Watson  
Payroll Administrator  
**Employer**

**AND TO:** **Marsh Instrumentation Inc.**  
1016-C Sutton Drive  
Burlington, Ontario  
L7L 6B8  
**Employer**

### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the Revised  
Pension Plan for Hourly Rated Employees of  
Marsh Engineering Ltd., Registration No.  
384313 (the "Plan"), be wound up in whole  
effective March 16, 2000.

**I PROPOSE TO MAKE THIS ORDER** pur-  
suant to subsection 69(1) of the *Pension Benefits  
Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension  
fund, within the meaning of clause 69(1)(a)  
of the *Act*.
2. The employer failed to make contributions  
to the pension fund as required by the *Act*  
or the regulations within the meaning of  
clause 69(1)(b) of the *Act*.
3. A significant number of members of the  
pension plan ceased to be employed by the  
employer as a result of the discontinuance  
of all or part of the business of the employer  
or as a result of the reorganization of the  
business of the employer, within the  
meaning of clause 69(1)(d) of the *Act*.
4. All or a significant portion of the business  
carried on by the employer at a specific  
location was discontinued, within the  
meaning of clause 69(1)(e) of the *Act*.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "Tribunal"),  
pursuant to subsection 89(6) of the *Act*, if with-  
in thirty (30) days after this Notice of Proposal  
is served on you, you deliver to the Tribunal a  
written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be  
delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED,** pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

**United Steelworkers of America**

1031 Barton Street East  
Hamilton, Ontario  
L8L 3E3

**Attention:** Dave MacIntosh  
Local President

**The Union**

**Deloitte & Touche Inc.**

181 Bay Street  
Suite 1400, BCE Place  
Toronto, Ontario  
M5J 2V1

**Attention:** Robert Paul  
Partner

**Trustee in Bankruptcy for  
Marsh Engineering Ltd. and  
Marsh Instrumentation Inc.**

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order Requiring the Wind Up in Part of the **Imperial Oil Limited Retirement Plan, Registration Number 347054;**

**TO:** **Imperial Oil Limited**  
111 St. Clair Avenue West  
Toronto, Ontario  
M5W 1K3

**Attention:** J.B. MacIntyre,  
Senior Benefits Advisor  
John F. Kyle, Vice President and  
Treasurer  
Morris G. Dunko,  
Senior Counsel, Law Department  
**Employer and Administrator  
of the Imperial Oil Limited  
Retirement Plan**

### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the Imperial Oil Limited Retirement Plan, Registration No. 347054 (the "Plan"), be wound up in part in relation to those members and former members of the Plan who were employed by General Electric Capital Canada Inc. ("GE Capital"), at its Markham, Ontario facility and who ceased employment with GE Capital between March 2000 and July 2000, as a result of the closure of the Markham facility.

**I PROPOSE TO MAKE THIS ORDER**, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended (the "Act").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Imperial Oil Limited ("IOL") is the employer and the administrator of the Plan.
2. IOL sold its credit card operations to GE Capital effective April 28, 1995. In conjunction with the sale, thirty-seven (37) former IOL employees became employees of GE Capital and became members of GE Capital's pension plan.
3. The pension benefits accrued by the transferred employees prior to the date of the sale remained in the Plan.
4. GE Capital closed its Markham, Ontario credit card facility effective May 5, 2000. In connection with this closure, it terminated thirty-two (32) of the thirty-seven (37) transferred employees, and filed a partial wind up report with the Pension Plans Branch of the Financial Services Commission.
5. Under paragraph 69(1)(d) of the *Act*, the Superintendent of Financial Services (the "Superintendent") may require the wind up of a pension plan, in whole or in part, if a significant number of the members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
6. Under paragraph 69(1)(e) of the *Act*, the Superintendent may require the wind up of a pension plan where all or a significant portion of the business carried on by an employer at a specific location is discontinued.
7. For the purposes of the *Act*, the word "employer," as it is used in subsection 69,



in respect of an employee with benefits in more than one plan, refers to both the predecessor and successor employer, as held by the Pension Commission of Ontario in *Gencorp Canada Inc.* and affirmed by the Divisional Court and the Court of Appeal.<sup>1</sup>

8. Paragraph 80(1)(a) of the *Act* provides that when an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the assets of its business, a member of the pension plan who in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and a member of the successor employer's pension plan, continues to be entitled, without further accrual, to the benefits provided under the predecessor employer's pension plan, to the effective date of the sale, assignment or disposition.
9. Subsection 80(3) of the *Act* provides that where a transaction, as described in subsection 80(1) above, takes place the employment of the employee shall be deemed, for the purposes of the *Act*, not to be terminated by reason of the transaction.
10. As held in *Gencorp*, subsection 80(3) deems the non-termination for the purpose of ensuring continuity of membership for the transferred employees and to prevent them from losing their previous years of service in the calculation of future benefits.
11. The effect of subsection 80(3), for the transferred employees, is that IOL continues to be their employer for the purpose of the Plan.
12. Accordingly, IOL is an employer who may be ordered to partially wind up a pension plan under section 69 of the *Act*,

due to the discontinuance of the business by GE Capital at the Markham facility of GE Capital.

13. A significant number of the members of the plan at the Markham facility ceased to be employed as a result of the discontinuance or reorganization of the business of GE Capital at its Markham facility, within the meaning of paragraph 69(1)(d) of the *Act*.
14. All or a significant portion of the business carried on by GE Capital at its Markham facility was discontinued, within the meaning of paragraph 69(1)(e) of the *Act*.
15. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the *Act*, if within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>2</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I WILL MAKE THE ORDER PROPOSED HEREIN.**

<sup>1</sup>Consolidated *Gencorp Canada*, P.C.O. Decision Aug. 31, 1994, confirmed Divisional Court, [1995 O.J. No. 3768], Dec. 7, 1995, confirmed Ontario Ct. of Appeal [1998 O.J. No. 961] March 11, 1998.



**THE ADMINISTRATOR IS REQUIRED,** pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to members and former members of the Plan who were employed by General Electric Capital Canada Inc. ("GE Capital") at its Markham, Ontario facility, and who ceased employment with GE Capital between March 2000 and July 2000, as a result of the closure of the Markham facility.

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

\*NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order with respect to the Calculation of Pension Benefits, pursuant to section 87 of the *Act*, relating to the **Imperial Oil Limited Retirement Plan, Registration Number 347054;**

**TO:** **Imperial Oil Limited**  
111 St. Clair Avenue West  
Toronto, Ontario  
M5W 1K3

**Attention:** J.B. MacIntyre,  
Senior Benefits Advisor  
John F. Kyle,  
Vice President and Treasurer  
Morris G. Dunko,  
Senior Counsel, Law Department  
**Employer and Administrator  
of the Imperial Oil Limited  
Retirement Plan**

### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the administrator of the Imperial Oil Limited Retirement Plan, Registration No. 347054 (the "Plan"), give credit for both age and years of service at the time they ceased employment with GE Capital to those members and former members of the Plan who were employed by General Electric Capital Canada Inc. ("GE Capital"), at its Markham, Ontario facility and who ceased employment with GE Capital between March 2000 and July 2000, as a result of the closure of the Markham facility, when determining entitlement to benefits under the Plan, pursuant to

article 80(1)(c) of the *Act*.

**I PROPOSE TO MAKE THIS ORDER** pursuant to subsection 87(1) of the *Act*.

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Imperial Oil Limited ("IOL") is the employer and the administrator of the Plan.
2. IOL sold its credit card operations to GE Capital effective April 28, 1995. In conjunction with the sale, thirty-seven (37) former IOL employees who were members of the Plan became employees of GE Capital and became members of GE Capital's pension plan.
3. The pension benefits accrued in the Plan by the transferred employees, prior to the date of the sale, remained in the Plan.
4. GE Capital closed its Markham, Ontario credit card facility effective May 5, 2000. In connection with this closure, it terminated thirty-two (32) of the thirty-seven (37) transferred employees ("the affected employees") and filed a partial wind up report with the Pension Plans Branch of the Financial Services Commission.
5. Upon their termination with GE Capital, the affected employees received from IOL a Statement of Entitlement and option form concerning their benefits and options under the Plan. In the Statement of Entitlement the termination date used for the determination of the affected employees' benefit options with respect to their age was the date of their transfer to GE Capital, not the date of their termination from GE Capital.
6. The Statement of Entitlement included the affected employees' years of service with GE Capital. In correspondence dated March 23, 2001, IOL's senior counsel indicated that

IOL took the view that under section 80 of the *Act*, years of service only are to be credited for the purpose of determining entitlement to benefits.

7. Subsection 80(3) of the *Act* provides that where a transaction, as described in subsection 80(1) above, takes place the employment of the employee shall be deemed, for the purposes of the *Act*, not to be terminated by reason of the transaction.
8. As held in *Gencorp*, and affirmed by the Divisional Court and the Court of Appeal,<sup>1</sup> subsection 80(3) deems the non-termination for the purpose of ensuring continuity of membership for the transferred employees and to prevent them from losing their previous years of service in the calculation of future benefits.
9. The effect of subsection 80(3), for the affected employees, is that IOL continues to be their employer for the purpose of the determining entitlement to the benefits of the Plan, up to the date of their termination with GE Capital. The affected employees are accordingly entitled to have their entitlement to benefits from the Plan determined as of their termination date with GE Capital.
10. Paragraph 80(1)(c) of the *Act* provides that when an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the assets of its business, a member of the pension plan who, in conjunction with the sale, assignment or disposition, becomes an employee of the successor employer and a member of the successor employer's pension plan,

is entitled to credit in the (predecessor) employer's pension plan for the period of employment with the successor employer for the purpose of determining benefits in the (predecessor) employer's pension plan.

11. For the purposes of the *Act*, I consider that the term "credit in the employer's pension plan" as it is used in paragraph 80(1)(c), refers to both age and years of service accumulated while in the employ of the successor employer.
12. Accordingly, I consider that the affected employees are entitled to credit for both their age and years of service as of their termination date with GE Capital, in the determination of their entitlement to benefits under the Plan.
13. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the *Act*, if within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>2</sup>

<sup>1</sup>*Consolidated Gencorp Canada*, P.C.O. Decision Aug. 31, 1994, confirmed Divisional Court, [1995 O.J. No. 3768], Dec. 7, 1995, confirmed Ontario Ct. of Appeal [1998 O.J. No. 961] March 11, 1998.



Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I WILL MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

\*NOTE – PURSUANT to section 112 of the Act any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Revised Pension Plan for  
Salaried Employees of Marsh  
Engineering Ltd., Registration  
Number 276030**;

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto, Ontario  
M5H 1B6

**Attention:** Lawrence A. Contant  
Manager  
**Administrator**

**AND TO:** **Marsh Engineering Ltd.**  
118 West Street  
Port Colborne, Ontario  
L3K 4C9

**Attention:** Charlotte Watson  
Payroll Administrator  
**Employer**

**AND TO:** **Marsh Instrumentation Inc.**  
1016-C Sutton Drive  
Burlington, Ontario  
L7L 6B8  
**Employer**

### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the Revised  
Pension Plan for Salaried Employees of Marsh  
Engineering Ltd., Registration No. 276030  
(the "Plan"), be wound up in whole effective  
March 16, 2000.

**I PROPOSE TO MAKE THIS ORDER** pur-  
suant to subsection 69(1) of the *Pension Benefits  
Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension  
fund, within the meaning of clause 69(1)(a)  
of the *Act*.
2. The employer failed to make contributions  
to the pension fund as required by the *Act*  
or the regulations within the meaning of  
clause 69(1)(b) of the *Act*.
3. A significant number of members of the  
pension plan ceased to be employed by the  
employer as a result of the discontinuance  
of all or part of the business of the employ-  
er or as a result of the reorganization of the  
business of the employer, within the  
meaning of clause 69(1)(d) of the *Act*.
4. All or a significant portion of the business  
carried on by the employer at a specific  
location was discontinued, within the  
meaning of clause 69(1)(e) of the *Act*.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "Tribunal"),  
pursuant to subsection 89(6) of the *Act*, if with-  
in thirty (30) days after this Notice of Proposal  
is served on you, you deliver to the Tribunal a  
written notice that you require a hearing.

Any written notice requiring a hearing shall be  
delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED,** pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

**Deloitte & Touche Inc.**

181 Bay Street  
Suite 1400, BCE Place  
Toronto, Ontario  
M5J 2V1

**Attention:** Robert Paul  
Partner

**Trustee in Bankruptcy for  
Marsh Engineering Ltd. and  
Marsh Instrumentation Inc.**

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Deputy Superintendent, Pension Division to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Swift Adhesives Salaried Employees Pension Plan, Registration Number 956219**;

**TO:** **Reichhold Limited**  
c/o Reichhold Inc.  
P.O. Box 13582  
Research Triangle Park  
Raleigh Durham,  
North Carolina  
27709-3582  
U.S.A.

**Attention:** Trent Rhyne  
Compensation and Benefits  
Director  
**Applicant and Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, in accordance with the Order of Mr. Justice Cumming of the Ontario Superior Court of Justice in the matter of Reichhold Limited and Michel Boyer and Gerard Boucher *et al*, dated February 2, 2000, including the Surplus Sharing Settlement Agreement attached thereto and made a part thereof (the "Court Order"), out of the Swift Adhesives Salaried Employees Pension Plan, Registration No. 956219 (the "Plan"), to Reichhold Limited, as follows:

(a) An amount shall be paid or allocated to the Applicant equal to:

- (i) \$541,305, the value of the liabilities as determined by the Plan Actuary in consultation with the actuary for the Plan members for early retirement benefits as negotiated and grow-in benefits required to be provided under the *Pension Benefits Act*, R.S.O. 1990, for Ontario members, which pursuant to the Surplus Sharing Settlement Agreement, shall be provided to all eligible employees of the Applicant accruing benefits under the Plan at any time in the period from November 13, 1998, through the Plan wind up date (April 30, 2000), regardless of jurisdiction of residence or employment and grow-in benefits as negotiated together with interest thereon from the date as at which each value is determined to the date of payment or allocation to the Applicant at the rates of interest used to determine the liability, as follows:

<b>Interest Rate</b>	<b>Value of Liabilities</b>
6.5% per annum	\$355,344
5.0% per annum	\$105,809
5.75% per annum	\$ 80,152
Total	\$541,305
plus	

- (ii) \$2.1 million as at April 30, 2000, together with interest thereon at the rate of 6.5%, being the rate of return used to determine the Plan's liability for transfer values as determined by the Actuary from April 30, 2000, to the date of payment; plus
- (iii) 50% of the surplus remaining after making provision for the payments contemplated in (i) and (ii) above together with net earnings or losses thereon (estimated to be, as at April 30, 2000, \$3,278,154).

### **I PROPOSE TO MAKE THE ORDER**

effective only after the Applicant satisfies me that the entitlements of all members and former



members are being settled from the assets of the Plan in accordance with the Court Order.

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Reichhold Limited is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective April 30, 2000.
3. As at April 30, 2000, the surplus in the Plan was estimated at \$9,197,614.
4. The court has ordered that the Plan provides for payment of surplus to the Employer on the wind up of the Plan in respect of subsection 79(3)(b) of the *Act*.
5. The application discloses that by written agreement made by the Employer, and 94.1% of the active members and other members (as defined in the application) and 79.2% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) 64.4% to the Employer; and
  - b) 35.6% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of \$541,305 as at April 30, 2000, plus \$2.1 million together with interest at the rate of 6.5% from April 30, 2000, to the date of payment plus 50% of the surplus remaining after making provision for the

forementioned payments together with net earnings or losses.

7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

cc: Kim Ozubko  
Blake, Cassels & Graydon LLP

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** an application pursuant to section 78(1) of the *Act* by Valcom Limited in respect of the **Pension Plan for Employees of Valcom Limited, Registration Number 589796 (formerly PCO Number C-101842)** (the "Plan");

**TO:** **Valcom Limited**  
c/o Cowan Wright Limited  
100 Regina Street South, Suite 270  
P.O. Box 96  
Waterloo, Ontario  
N2J 3Z8

**Attention:** Moira Graham  
Actuary  
**Applicant and Employer**

### **Notice of Proposal Refuse Consent**

**I PROPOSE TO REFUSE TO CONSENT** to the application for payment of surplus to the Employer made pursuant to s. 78(1) of the *Act* and dated July 1998.

### **I PROPOSE TO REFUSE TO CONSENT TO THE APPLICATION FOR THE FOLLOWING REASONS:**

1. The Plan is a defined benefit pension plan. Valcom Limited is the employer as defined in the Plan (the "Employer").
2. On or about July 3, 1997, the Employer provided notice to members that the Plan would be wound up. The Employer stated that the effective date of the wind up was August 31, 1997. In letters dated July 18, 1997, sent to the only two active members, the Employer indicated an intention to share surplus assets with the two active members. In a letter dated August 25, 1997, to the former Pension Commission of Ontario, the Employer stated that all members and former members were provided notice of the wind up and that the effective date of the wind up was changed from August 31, 1997, to September 25, 1997.
3. On or about September 5, 1997, deferred and immediate annuities were purchased in respect of the pension benefits owing to nine former employees who were former members at the time (the "Annuitants").
4. As at September 25, 1997, the surplus in the Plan was estimated at \$496,429.
5. The Employer proposes in the Application that 87.9% of the surplus in the Plan, subject to adjustment for investment earnings to the date of payment and subject to adjustment for any difference between the actual and expected costs of obtaining the conditional benefit upgrades referred to in the Surplus Distribution Agreement, be distributed to the Employer. The Employer proposes that the other 12.1% be distributed to the two active members. These active members have signed consents indicating their agreement with the surplus distribution proposed in the Application.
6. The Annuitants are not included in the surplus distribution group nor did the Employer produce agreements signed by these members consenting to the proposed surplus distribution.
7. At the time that notice to wind up the Plan was provided by the Employer to members and former members, the Annuitants were former members within the meaning of s.1 of the *Act*. As such, the Annuitants, at the time that the wind up notice was provided, were entitled to be included in the surplus



consent group pursuant to subsection 8(1)(b) of Regulation 909, R.R.O. 1990, as amended (the "Regulation").

8. As the applicant in the surplus distribution application, the Employer has the onus of demonstrating that the application complies with the *Act* and regulations. The Employer has not provided any evidence to demonstrate that the purchase of annuities on behalf of the Annuitants was consistent with the past practice in the Plan. The Employer has not provided any evidence to demonstrate that the purchase of annuities for the Annuitants just 20 days before the eventual effective date for the wind up and the decision to move the effective date of the wind up from August 31, 1997, to September 25, 1997, were not for the improper purpose of limiting the number of former members entitled to be included in the surplus group set out in subsection 8(1)(b) of the Regulation.

9. The Application, therefore, does not comply with section 79(3)(d) of the *Act*.
10. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to revoke the registration of **Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration Number 1062363** (the "*Plan*") pursuant to section 18 of the *Act*;

**TO:** **Fiducie du Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center**

**Attention:** Michel Rolland  
Designated Trust Administrator  
40 Place du Commerce  
P.O. Box 63029  
Verdun (Nuns Island), Québec  
H3E 1V6  
Éric Ferron  
Trustee  
3485 des Érables  
Montreal, Québec  
H2K 3V6  
Michel Dion  
Trustee  
450 Laurier Avenue  
Québec City, Québec  
G1R 2L2  
Guy Patrick Léveillé  
Trustee  
1009 Émile Nelligan  
Boucherville, Québec  
J4B 5J1

**Named Administrator**

## **Notice of Proposal**

**I PROPOSE, PURSUANT TO SECTION 18(1) OF THE ACT, TO REVOKE THE REGISTRATION** of the Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration No. 1062363 (the "*Plan*").

**I PROPOSE TO REVOKE THE REGISTRATION FOR THE FOLLOWING REASONS:**

### **Named Administrator**

1. The application for registration of the Plan indicates that the Canadian Corporation Creation Center ("CCCC") is the employer for the Plan. The text for the Plan states that the administrator for the Plan is the Fiducie du Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center (Pension Trust Fund of the Employees and Members of Canadian Corporation Creation Center (the "Pension Trust Fund")). The Trust Agreement for the Plan dated June 21, 2000, states that Michel Dion, Éric Ferron and Guy Patrick Léveillé are trustees. Michel Rolland is the Designated Trust Administrator.
2. Section 8 of the *Act* provides an exhaustive list of those entities who are eligible to act as administrators of a pension plan under the *Act*. Section 8 does not permit a pension trust fund to act as an administrator of a single employer pension plan. The Plan purports to be a single employer plan. Therefore, the Pension Trust Fund is not eligible to act as the administrator of the Plan.

### **Missing Information in the Plan Documents**

3. Subsection 10(1) of the *Act* requires that the pension plan set out certain prescribed information. The Plan does not set out the



following information in contravention of the following subclauses of section 10(1):

- a. The requirements for entitlement to any pension benefit or ancillary benefit (subclause 5);
- b. The mechanism for establishing and maintaining the pension fund (subclause 10);
- c. The treatment of surplus during the continuation of the Plan and on windup of the Plan (subclause 11); and
- d. The method of allocation of the assets of the Plan on windup (subclause 13).

### Declaration

4. Clause 9(2)(e.1) of the *Act* states that an application for registration of a pension plan shall be made by filing, *inter alia*, a "certification in a form approved by the Superintendent and signed by the applicant in which the applicant attests that the pension plan complies with [the] *Act* and regulations." In the application for registration of the Plan, the named administrator attested that:
  - a. the documents that create and support the Plan complied with the *Act* and regulations; and
  - b. that the named administrator was aware that the obligation to ensure that the documents filed comply with the *Act* and regulations is the responsibility of the administrator and that this obligation was fulfilled.
5. The named administrator has contravened clause 9(2)(e.1) of the *Act* in that the declaration provided in the application for registration was false because the documents that create and support the Plan do not comply with the *Act* as set out above.

### Members of the Pension Plan

6. Sections 27 and 28 of the Plan state that only employees of an employer that belongs to the Plan are eligible to participate in the Plan. Section 1 of the *Act* defines an employer as a "the person from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related."
7. The Superintendent has information which indicates that the Plan is accepting transfers of funds from locked-in retirement accounts or other similar prescribed retirement savings arrangements from individuals who do not receive remuneration from an employer that belongs to the Plan. Therefore, such persons are not employees, within the meaning of section 1 of the *Act*, of an employer that belongs to the Plan. The Plan's acceptance of such transfers contravenes the terms of the Plan.
8. Clause 19(3)(a) of the *Act* states that the administrator of a pension plan shall ensure that the pension plan and pension fund are administrated in accordance with the "filed documents in respect of which the Superintendent has issued an acknowledgment of application for registration or a certificate of registration". The acceptance of fund transfers in respect of individuals who are not employees of an employer that belongs to the Plan is a contravention of section 27 and 28 of the Plan and, therefore, constitutes a contravention of clause 19(3)(a) of the *Act*.
9. The transfer of funds from locked-in retirement accounts or other similar prescribed retirement savings arrangements in respect of account holders who are not members of



the Plan constitutes a commutation or surrender of a prescribed savings arrangement contrary to section 67 of the *Act* because such funds are not capable of being commuted or surrendered (subject to certain exceptions which do not apply in this case).

### **Transfer of Funds from the Plan**

10. Subsection 22(1) of the *Act* states that “the administrator of a pension plan shall exercise the care, diligence and skill required in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.” Subsection 22(4) states that an administrator “shall not knowingly permit the administrator’s interest to conflict with the administrator’s duties and powers in respect of the pension fund.”

11. The Superintendent has information that indicates that funds from the pension fund in respect of the Plan have been transferred from the pension fund to bank accounts held by companies named National Business Investment In Trust Inc. (“NBI In Trust”), National Business Investment Canada Inc. (“NBI Canada”) and/or CCCC (the employer under the application for registration). In filings with the Companies Branch of the Ontario Ministry of Consumer and Commercial Relations, Michel Rolland, Designated Trust Administrator for the Pension Trust Fund, is listed as the administrator for NBI In Trust. In banking records, Michel Rolland is listed as the “owner/signing officer” for NBI In Trust and Michel Rolland and Michel Dion are listed as authorized representatives for NBI Canada.

12. In transferring or allowing the transfer of funds from the pension fund to the NBI In Trust, NBI Canada and/or CCCC bank accounts, the Pension Trust Fund as the named administrator has permitted the use or diversion of funds for purposes other than the purpose of the Plan in contravention of the trust agreement and subsection 22(1) of the *Act*.

13. In addition, the Pension Trust Fund has contravened subsection 22(4) of the *Act* because it has knowingly permitted its own interest to conflict with its duties and powers in respect of the pension fund in that Michel Rolland is an officer of NBI In Trust and Michel Rolland and Michel Dion are authorized representatives of NBI Canada. Lastly, funds have been transferred from the pension fund to accounts held by CCCC, which contravenes subsection 78(1) of the *Act*. Subsection 78(1) of the *Act* states that no money may be paid out of a pension fund to the employer without the prior consent of the Superintendent.

### **Investments**

14. Section 62 of the *Act* states that the investments to be made with the assets of the pension fund shall be selected in accordance with the criteria set out in the *Act* and regulations. Section 79 of the Regulation states that assets of a pension plan shall be invested in accordance with the federal investment regulations. Clause 6(1)(b)(i) of the *Pension Benefits Standards Regulations*, 1985, SOR/87-19 to the *Pension Benefits Standards Act*, 1985, R.S.C. 1985, c. 32 as amended, states that the moneys of the pension fund are to be invested in a name that clearly indicates that the investment is held in trust for the plan or in the



name of a financial institution or The Canadian Depository for Securities Limited in accordance with a trust or custodial agreement that clearly indicates that the investment is held for the plan.

15. The moneys of the pension fund are not being invested in trust for the Plan nor are they being held in the name of a financial institution and/or The Canadian Depository for Securities Limited in accordance with a trust or custodial agreement that clearly indicates that the investment is held for the Plan. The named administrator has, therefore, failed to select the investments for the pension fund in accordance with the criteria set out in the *Act* and regulations in contravention of section 62 and subsection 22(1) of the *Act* and section 79 of the Regulation.

#### **Assignments of Locked In Accounts**

16. Section 65 of the *Act* states that every transaction that purports to assign, charge, anticipate or give as security, money payable under a pension plan or transferred from a pension fund is void. The Superintendent has information that indicates that the funds transferred to the pension fund in respect of the Plan from locked in retirement accounts or other prescribed retirement arrangements have been assigned, charged, anticipated or given as security in favour of NBI In Trust in return for the extension of a loan from NBI In Trust to the holder of the prescribed retirement arrangement. Such transactions are unlawful and void pursuant to section 65 of the *Act*. The named administrator has accepted the transfer of funds from locked in retirement accounts or other prescribed retirement arrangements which funds have been assigned, charged, anticipated or given as

security in contravention of section 65 of the *Act*.

#### **Annual Filings**

17. Subsection 20(1) of the *Act* states that the administrator "shall file each year an annual information return in respect of the pension plan ... and shall pay the filing fee established by the Minister." Subsection 20(2) of the *Act* states that the administrator "shall file additional reports at the times and containing the information prescribed by the regulations."
18. Subsection 18(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation") states that the administrator shall file the annual information return not later than six months after the end of the fiscal year of the plan in the case of a defined contribution plan. Subsections 76(1) and (2) of the Regulation state that the administrator shall file financial statements for the pension plan or fund as at the plan's fiscal year end and if at the fiscal year end the plan has \$3,000,000 or more in assets, the administrator shall file an auditor's report respecting the financial statements. Subsection 76(4) of the Regulation states that the financial statement and auditor's report shall be filed within six months after each fiscal year end for the plan.
19. The Plan is a defined contribution pension plan. The fiscal year end for the Plan is December 31. No annual information return, financial statements or auditor's report (if required) have been filed by the Pension Trust Fund to date in contravention of section 20 of the *Act* and subsections 18(1), 76(1), 76(2) and 76(4) of the Regulation.



## Information Requested by the Superintendent

20. Subsection 98(1) of the *Act* states that “[t]he Superintendent may require an employer, an administrator or any other person to supply the Superintendent such information ... for the purpose of ascertaining whether or not [the] *Act* and the regulations are being complied with”. The Superintendent has requested certain information regarding the Plan pursuant to section 98 of the *Act*. Subsection 98(2) of the *Act* stipulates that the person to whom a request is made under subsection 98(1) of the *Act* must comply with the request within the time specified by the Superintendent. To date, the information requested has not been filed with the Superintendent by the named administrator. The named administrator, in failing to respond to a request for information pursuant to section 98 of the *Act*, has failed to administer the plan in accordance with the *Act*.

## Conclusion

21. Clause 18(1)(b) of the *Act* states that the Superintendent may “revoke the registration of a pension plan that does not comply with [the] *Act* and the regulations”. The Superintendent proposes to revoke the registration of the Plan pursuant to clause 18(1)(b) of the *Act* for the following reasons:

- a. The named administrator of the Plan, the Pension Trust Fund, is not eligible to act as the administrator of the Plan under section 8 of the *Act*; and
- b. The documents that create and support the Plan do not set out the information specified in paragraph 3 above in contra-

vention of section 10 of the *Act*.

22. Clause 18(1)(c) of the *Act* states that the Superintendent may “revoke the registration of a pension plan that is not being administered in accordance with [the] *Act* and the regulations”. The Superintendent proposes to revoke the registration of the Plan pursuant to clause 18(1)(c) of the *Act*, for the following reasons:

- a. The named administrator has provided a false declaration that the plan complies with the *Act* and regulations in contravention of clause 9(2)(e.1) of the *Act*;
- b. The named administrator is accepting transfers of funds from persons who are not eligible to participate in the Plan in contravention of the Plan and, hence, in contravention of the clause 19(3)(a) of the *Act*;
- c. The named administrator is accepting transfers from locked in retirement accounts or other prescribed retirement arrangements which transfers constitute a commutation or surrender of a prescribed retirement arrangement in contravention of section 67 of the *Act*;
- d. The named administrator has not exercised the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person because it transferred or permitted the transfer of funds from the pension fund to NBI In Trust, NBI Canada and/or CCCC in contravention of subsection 22(1) of the *Act*;
- e. The named administrator has knowingly permitted its own interest to conflict with its duties and powers in respect of the pension fund by transferring or permitting the transfer of funds from the pension fund to NBI In Trust, NBI Canada and/or CCCC in



- contravention of subsection 22(4) of the *Act*;
- f. The named administrator has failed to select the investments for the pension fund in accordance with the *Act* and regulations in contravention of section 62 and subsection 22(1) of the *Act* and section 79 of the Regulation;
- g. The named administrator has accepted the transfer of funds from locked in retirement accounts or other prescribed retirement arrangements which funds have been assigned, charged, anticipated or given as security in contravention of section 65 of the *Act*;
- h. The named administrator has failed to file the annual information return, financial statements and auditor's report (if required) within the prescribed time limits in contravention of section 20 of the *Act* and subsections 18(1), 76(1), 76(2) and 76(4) of the Regulation; and
- i. The named administrator failed to provide information requested by the Superintendent in contravention of section 98 of the *Act*.
23. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 10th day of August, 2001.

Philip Howell  
Chief Executive Officer and  
Superintendent of Financial Services (Acting)

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a proposal by the Superintendent of Financial Services to make an Order under section 87 of the *Act* in respect of the **Pension Plan for Salaried Employees of Canadian Tack & Nail Ltd., Registration Number 0581306** (the "Plan");

**TO:** **Canadian Tack & Nail Ltd.**  
431 Dundas St.,  
Cambridge, Ontario  
N1R 5W6

**Attention:** Gary Ayers  
Vice President/General Manager  
**Administrator of the Plan**

### **Notice of Proposal to Make An Order**

**I PROPOSE TO MAKE AN ORDER** under section 87 of the *Act*, requiring the Employer or Administrator of the Plan to remit within thirty days of receiving this Notice outstanding contributions in the amount \$67,933, as of December 31, 1999, owed to the Pension Fund, together with interest payable under section 24 of Regulation 909 under the *Act*.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. An actuarial valuation received by the Superintendent filed effective December 31, 1999, shows outstanding employer contributions to the Pension Fund of \$67,933.
2. The Plan Administrator has failed to remit the outstanding contributions.
3. Section 55(2) of the *Act* requires contributions to be made to the pension plan in the prescribed manner and in accordance with the prescribed requirements for funding.

4. Section 56(1) of the *Act* requires the administrator of a pension plan to ensure that all contributions are paid when due.
5. Regulation 909 under the *Act* prescribes funding requirements for pension plans. Subsection 4(2) requires an employer or another person required to make contributions to the fund, to pay amounts that are not less than all contributions required to pay the normal cost and all special payments determined in accordance with the requirements of the regulation.
6. Subsection 4(4) of Regulation 909 requires contributions in respect of the normal cost of a plan to be made in monthly instalments payable within thirty days of the month for which contributions are due.
7. Subsection 4(4) of Regulation 909 requires contributions in respect of special payments in respect of any fiscal year to be made within thirty days after the end of the fiscal year, and to be made in equal monthly instalments in accordance with the requirements of the regulation.
8. Section 2.3 of the Plan provides that the funding of the Plan shall be in accordance with the *Act* to meet funding and solvency requirements. Section 4.4 of the Plan requires contributions to be made in accordance with the *Act*, and to be deposited within 30 days after the end of the month in which service was rendered.
9. In failing to remit in full the required contributions to the fund as prescribed pursuant to Regulation 909, and as required under the Plan, the employer is failing to administer the Plan and the Fund in accordance with the *Act*, the regulations and the pension plan.



10. In failing to remit in full the required contributions to the fund as prescribed pursuant to Regulation 909, and as required under the Plan, the employer is contravening the requirements of section 55 of the *Act*, and section 4 of the Regulation.
11. Subsection 87(2) of the *Act* allows the Superintendent to make an order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the regulations or the pension plan.
12. Subsection 87(2) of the *Act* allows the Superintendent to make an order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the employer, the administrator of a pension plan, or any other person is contravening a requirement of the *Act* or the regulations.
13. Such further and other grounds as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 14th day of August, 2001.

K. David Gordon

Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to revoke  
the registration of **Régime de Retraite des  
Employés et Membres de Canadian  
Corporation Creation Center,**  
**Registration Number 1062363** (the "Plan")  
pursuant to section 87 of the *Act*;

**TO:** **TD Canada Trust**

Corporate Banking  
TD Centre  
27th Floor  
Toronto, Ontario  
M5K 1A2

**Attention:** Mr. Ed Clark

Chief Executive Officer

**Fiducie du Régime de  
Retraite des Employés et  
Membres de Canadian  
Corporation Creation Center**

**Attention:** Michel Rolland

Designated Trust Administrator  
40 Place du Commerce  
P.O. Box 63029  
Verdun (Nuns Island), Québec  
H3E 1V6

Éric Ferron

Trustee  
3485 des Érables  
Montreal, Québec  
H2K 3V6

Michel Dion

Trustee  
450 Laurier Avenue  
Québec City, Québec  
G1R 2L2

Guy Patrick Léveillé

Trustee

1009 Émile Nelligan  
Boucherville, Québec  
J4B 5J1

**Named Administrator**

### Notice of Proposal

**I PROPOSE**, pursuant to section 87 of the *Act*,  
**TO ORDER**, effective the date of the order,  
that TD Canada Trust refrain from paying out,  
transferring, releasing or otherwise removing  
any moneys relating to the Régime de Retraite  
des Employés et Membres de Canadian  
Corporation Creation Center, Registration No.  
1062363 (the "Plan"), from all accounts held at  
TD Canada Trust, including but not limited to  
the accounts corresponding to the following  
account numbers: 345-597827; 345-597806;  
and 345-597541; and that TD Canada Trust  
hold the moneys relating to the Plan in a name  
that clearly indicates that the moneys are  
invested in trust for the Plan or in the name of  
TD Canada Trust in accordance with a trust or  
custodial agreement that clearly indicates that  
the moneys are invested in an investment that  
is held for the Plan.

### **I PROPOSE TO MAKE THE ORDER FOR THE FOLLOWING REASONS:**

#### **Deputy Superintendent's Direction**

1. On or about August 3, 2001, the Deputy  
Superintendent, Pension Division (the  
"Deputy Superintendent"), issued a Notice  
indicating that he was acting as administra-  
tor for the Plan pursuant to subsection  
71(1) of the *Act*. Subsection 71(1) of the *Act*  
states that "if a pension plan that is to be  
wound up in whole or in part does not  
have an administrator or the administrator



fails to act, the Superintendent may act as or may appoint an administrator."

2. Subsection 18(5) of the *Act* states that "where the registration of a pension plan is refused or revoked, the administrator shall wind up the pension plan in accordance with [the] *Act* and the regulations". On August 10, 2001, the Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposal to revoke the registration of the Plan pursuant to subsection 18(1) of the *Act*. A copy of the August 10, 2001 Notice of Proposal is attached hereto as Schedule "A". The reasons for the August 10, 2001 Notice of Proposal are, *inter alia*, that the Plan does not comply with the *Act* and that the Plan is not being administered in accordance with the *Act*. The reasons set out in the August 10, 2001 Notice of Proposal are adopted and relied upon as reasons to support this Notice of Proposal. By virtue of the August 10, 2001 Notice of Proposal and subsection 18(5) of the *Act* the Plan is to be wound up.
3. The application for registration of the Plan states that Canadian Corporation Creation Center ("CCCC") is the employer for the Plan. The text for the Plan states that the administrator for the Plan is the Fiducie du Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center (Pension Trust Fund of the Employees and Members of Canadian Corporation Creation Center (the "Pension Trust Fund"). The Trust Agreement for the Plan dated June 21, 2000, states that Michel Dion, Éric Ferron and Guy Patrick Léveillé are trustees. Michel Rolland is the Designated Trust Administrator.
4. Section 8 of the *Act* provides an exhaustive list of those entities who are eligible to act as administrators of a pension plan under the *Act*. Section 8 does not permit a pension trust fund to act as an administrator of a single employer pension plan. The Plan purports to be a single employer plan.
5. Therefore, the Pension Trust Fund is not eligible to act as the administrator of the Plan and the Plan does not have a valid administrator. The Deputy Superintendent, by authority delegated from the Superintendent and pursuant to subsection 71(1) of the *Act*, is eligible to act as the administrator. As administrator, the Deputy Superintendent is required under subsection 19(1) of the *Act* to "ensure that the pension plan and pension fund are administered in accordance with [the] *Act* and regulations."
6. The Deputy Superintendent has reason to believe that some or all of the assets of the Plan are or may be held in a number of accounts with TD Canada Trust under the names CCCC, Canadian Corporation Creation Center (pension plan), National Business Investment In Trust Inc., NBI In Trust Inc. ("NBI In Trust") and National Business Investment Canada Inc. ("NBI Canada") including but not limited to the accounts corresponding to the following account numbers: 354-597827, 345-597806 and 345-597541 (the "identified accounts").
7. In a letter dated August 3, 2001, the Deputy Superintendent, in his capacity as administrator, directed TD Canada Trust to ensure that no moneys in the identified accounts are paid out, transferred or otherwise removed from these accounts.
8. TD Canada Trust has not complied with the Deputy Superintendent's August 3, 2001,



direction and funds have been removed from the identified accounts both prior and subsequent to August 3, 2001.

### **Investment and Deposit of the Assets of the Plan**

9. Subsection 22(1) of the *Act* states that "the administrator of a pension plan shall exercise the care, diligence and skill required in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person." Subsection 22(4) states that an administrator "shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund."
10. The Deputy Superintendent has information that indicates that assets of the pension fund in respect of the Plan have been deposited in the identified accounts by NBI In Trust, NBI Canada, National Business Investment In Trust Inc. and/or CCCC (the employer under the application for registration). In filings with the Companies Branch of the Ontario Ministry of Consumer and Commercial Relations, Michel Rolland, Designated Trust Administrator for the Pension Trust Fund, is listed as the administrator for NBI In Trust. In banking records, Michel Rolland is listed as the "owner/signing officer" for NBI In Trust, and Michel Rolland and Michel Dion are listed as authorized representatives for NBI Canada.
11. In depositing or allowing the deposit of assets of the pension fund in the NBI In Trust, NBI Canada and/or CCCC bank accounts and in permitting the further withdrawal of pension assets from the identified accounts, the Pension Trust Fund as the named administrator has permitted the use or diversion of funds for purposes other than the purpose of the Plan in contravention of the trust agreement and subsection 22(1) of the *Act*.
12. In addition, the Pension Trust Fund has contravened subsection 22(4) of the *Act* because it has knowingly permitted its own interest to conflict with its duties and powers in respect of the pension fund in that Michel Rolland is an officer of NBI In Trust and Michel Rolland and Michel Dion are authorized representatives of NBI Canada. Lastly, pension funds have been deposited in accounts held by CCCC, which contravenes subsection 78(1) of the *Act*. Subsection 78(1) of the *Act* states that no money may be paid out of a pension fund to the employer without the prior consent of the Superintendent.
13. Section 62 of the *Act* states that the investments to be made with the assets of the pension fund shall be selected in accordance with the criteria set out in the *Act* and regulations. Section 79 of Regulation 909, R.R.O. 1990, as amended (the "Regulation") states that the assets of a pension plan shall be invested in accordance with the federal investment regulations. Clause 6(1)(b)(i) of the *Pension Benefits Standards Regulations*, 1985, SOR/87-19 to the *Pension Benefits Standards Act*, 1985, R.S.C. 1985, c. 32 as amended, states that the moneys of the pension fund are to be invested in a name that clearly indicates that the investment is held in trust for the plan or in the name of a financial institution or The Canadian Depository for Securities Limited in accordance with a trust or custodial agreement that clearly indicates that the investment is held for the plan.



14. The moneys of the pension fund are not being invested in trust for the Plan nor are they being held in the name of a financial institution and/or The Canadian Depository for Securities Limited in accordance with a trust or custodial agreement that clearly indicates that the investment is held for the Plan. The named administrator has, therefore, failed to select the investments for the pension fund in accordance with the criteria set out in the *Act* and regulations in contravention of section 62 and subsection 22(1) of the *Act* and section 79 of the Regulation.

### Conclusion

15. Subsection 87(1) of the *Act* states that the "Superintendent, in the circumstances mentioned in subsection [87](2) and subject to section 89 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund."
16. Subsection 87(2) of the *Act* states that the Superintendent may make an order under section 87 "if the Superintendent is of the opinion, upon reasonable and probable grounds,
- a. That the pension plan or pension fund is not being administered in accordance with [the] *Act*, the regulations or the pension plan;
  - b. That the pension plan does not comply with [the] *Act* and the regulations; or
  - c. That the administrator of the pension plan, the employer or other person is contravening a requirement of [the] *Act* or the regulations."
17. The Superintendent proposes to issue the proposed order pursuant to clause 87(2)(a) of the *Act* on the following basis:
- a. The named administrator has not exercised the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person because it deposited or permitted the deposit of pension funds into the identified accounts held by National Business Investment In Trust Inc., NBI In Trust Inc., National Business Investment Canada Inc. and/or CCCC and further it permitted the withdrawal of pension assets from the identified accounts in contravention of subsections 22(1) and 78(1) of the *Act*;
  - b. The named administrator has knowingly permitted its own interest to conflict with its duties and powers in respect of the pension fund by depositing or permitting the deposit of pension funds into the identified accounts held by CCCC, National Business Investment In Trust Inc., NBI In Trust Inc. and/or National Business Investment Canada Inc. in contravention of subsection 22(4) of the *Act*; and
  - c. The pension fund has not been invested in accordance with the *Act* and regulations in contravention of section 62 and subsection 22(1) of the *Act* and section 79 of the Regulation.
19. Such further and other reasons as may come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 15th day of August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order, pursuant to section 69 of the *Act*, respecting the **Pension Plan for Executives of William H. Kaufman Inc.**,  
**Registration Number 999631** (the "*Plan*");

**TO:** **The Standard Life Assurance Company**

1245 Sherbrooke Street West,  
Montreal, Québec  
H3G 1G3

**Attention:** Jean-Claude Lebel  
Pension Actuary  
**Administrator**

**AND TO:** **William H. Kaufman Inc.**  
P.O. Box 9005, Kitchener Stn. C,  
410 King St. West,  
Kitchener, Ontario  
N2G 4J8

**Attention:** Stuart Snyder  
Secretary Treasurer  
**Employer**

### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the Pension Plan for Executives of William H. Kaufman Inc., Registration No. 999631 (the "*Plan*"), be wholly wound up effective July 21, 2000.

**I PROPOSE** to make this order pursuant to subsection 69(1) of the *Act*.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the *Act*.

2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations within the meaning of clause 69(1)(b) of the *Act*.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R. S. C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the *Act*.
4. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer within the meaning of clause 69(1)(d) of the *Act*.
5. All or a significant portion of the business carried on by the employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the *Act*.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "*Tribunal*") pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**



**THE ADMINISTRATOR IS REQUIRED**, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

**Ernst & Young Inc.**

Toronto-Dominion Centre,  
P.O. Box 251, 222 Bay Street,  
Toronto, Ontario  
M5K 1J7

**Attention:** Philip Kan

**Interim Receiver and  
Receiver and Trustee in  
Bankruptcy for William H.  
Kaufman Inc.**

DATED at North York, Ontario, this 17th day of August, 2001.

K. David Gordon

Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

\*NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Ebasco Services of Canada Limited Salaried Employees Retirement Plan, Registration Number 0546093**;

**TO:** **Ebasco Services of Canada Limited**  
c/o TXU Gas Company  
1601 Bryan Street  
Dallas, Texas  
75201-3411  
U.S.A.

**Attention:** John F. Stephens, Jr.  
Assistant Secretary of TXU Gas Company  
**Applicant and Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment out of the Ebasco Services of Canada Limited Salaried Employees Retirement Plan, Registration No. 0546093 (the "Plan"), to Ebasco Services of Canada in the amount of \$161,090, plus investment earnings minus expenses incurred thereon to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) and any other

payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Ebasco Services of Canada is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective April 1, 1987.
3. As at April 1, 1987, the surplus in the Plan was estimated at \$208,810.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 66<sup>2</sup>/<sub>3</sub>% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed:
  - a) 50% to the Employer; and
  - b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the net surplus in the Plan.
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 20th day of, August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

cc: **Mr. Jeff Chuchman**  
Financial Services  
Commission of Ontario

**Mr. Duncan B. Richardson**  
William M. Mercer Ltd.

**Mr. Frank Peterson**  
32 Tara Avenue  
Scarborough, Ontario  
M1K 4B1

**Mr. Bharat Mohan Kukreti**  
88 Harvest Moon Drive  
Markham, Ontario  
L3R 4L6

**Mr. Naso S. Janovsky**  
1233 Scottsburg Cres.  
Mississauga, Ontario  
L4W 2Z9

**Mr. C.W. So**  
23 Kerbar Road  
Scarborough, Ontario  
M1V 1G2

**Mr. Ronald C. Chambers**  
6 Willowgate Drive  
Markham, Ontario  
L3P 1G2

**Mr. John W. Staines**  
121 Trayburn Drive  
Richmond Hill, Ontario  
L4C 4K6

**Mr. Ronaldo V. Olay**  
1492 Islington Avenue  
Etobicoke, Ontario  
M9A 3L5

**Mr. W. Milczyn**  
513-2313 Lake Shore Blvd. W.  
Toronto, Ontario  
M8V 1A8

**Mr. Patrick Kam**  
69 Canlish Road  
Scarborough, Ontario  
M1P 1S6

**Mr. R. Mitchell**  
4044 Powderhorn Court  
Mississauga, Ontario  
L5L 3C4

**Mr. Basil W. Pearce**  
Unit 1800  
55 Kingsbridge Garden Circle  
Mississauga, Ontario  
L5R 1Y1



**Mr. B. Ivsins**

395 Martha Street  
Suite 607  
Burlington, Ontario  
L7R 4A9

**Mr. Robert Cudden**

43 Tremont Crescent  
Don Mills, Ontario  
M3B 2R9

**Mr. Pinaki Ranjan Roy**

77 Howard Street  
Apartment 905  
Toronto, Ontario  
M4X 1J9

**Mr. George Poulos**

369 Ellis Park Road  
Toronto, Ontario  
M6S 2V7

**Mr. Michael M. Salamon**

256 Armour Blvd.  
North York, Ontario  
M3H 1N3

**Mr. Miguel Hortiguela**

331 Trudelle Street  
Unit 53  
Scarborough, Ontario  
M1J 3J9

**Mr. Maurice Titmuss**

6233 191A Street  
Surrey, British Columbia  
V3S 8C6

**Mr. Gerald P. Barron**

67 Dewlane Drive  
Willowdale, Ontario  
M2R 2P9

**Mr. Robert Rollinson-Lorimer**

566 Hawthorne Cres.  
Milton, Ontario  
L9T 4N8

NOTE - PURSUANT to section 112 of the Act any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");  
**AND IN THE MATTER OF** an application pursuant to s. 78(1) of the *Act* submitted by City Of Kitchener in respect of **The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475** (the "*Plan*");

**TO:** **City of Kitchener**  
 City Hall, P.O. Box 1118  
 200 King Street West  
 Kitchener, Ontario  
 N2G 4G7

**Attention:** Ms. Rosemary Upfold, Director of Accounting  
**Applicant and Employer**

### **Notice of Proposal to Refuse to Consent To Application**

**I PROPOSE TO REFUSE TO CONSENT** to the application for payment of surplus to the employer dated July 17, 2000, pursuant to s. 78(1) of the *Act*.

### **I PROPOSE TO REFUSE TO CONSENT TO THE APPLICATION FOR THE FOLLOWING REASONS:**

1. In 1946, the documents which created the Plan (including the Employee Booklet) required that the member and employer contributions would be applied to effect a group life and pension policy with the Standard Life Assurance Company (the "*Policy*"). The documents which created the Plan also provided that the employer would hold in trust for the benefit of members the *Policy* and all the benefits payable thereunder. Those documents, although amended on January 1, 1958, continued until 1973 to

provide that the employer would hold the *Policy* in trust for the benefit of members. Hence the Plan provided that the *Policy* would be held in trust for the benefit of the members from its inception.

2. Since the member and employer contributions were to be used to purchase the *Policy* and since the *Policy* and all benefits payable thereunder were to be held in trust for the members, any excess amounts available under the *Policy*, after the payment of benefits, would be subject to the trust for the benefit of the members and not the employer.
3. Any policy purchased using member and employer contributions made pursuant to the Plan would also be subject to the same trust provisions as the *Policy*.
4. In 1978, for the first time, the Plan documents were amended to provide that the surplus belonged to the employer, the City of Kitchener. However since the Plan was subject to a trust prior to 1978, that amendment would have been void, unless the employer reserved the power to revoke the trust.
5. The provisions in the Plan documents prior to 1978 which reserved a right to the employer to amend or discontinue the Plan, did not give the employer the power to revoke the trust.
6. Therefore the employer has not demonstrated that it has complied with s. 79(3)(b) of the *Act*, which requires that the Plan provide for payment of surplus to the employer on the wind up of the Plan.
7. The employer has not demonstrated that the required level of consent required by clause 8(1)(b) of Regulation 909 made under the *Pension Benefits Act*, R.S.O. 1990



Ch P.8, as amended, for the 76 former members shown in the wind up report as entitled to payments under the pension plan on the date of wind up, has been achieved.

8. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 23rd day of August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");  
**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Act* in respect of **The Retirement Plan for Hourly Employees of Superior Machine and Tool (Chatham) Limited, Registration Number 327601** (the "*Plan*");

**TO:** **Morneau Sobeco  
 Deloitte & Touche Inc. by its agent**  
 1500 Don Mills Road, Suite 500  
 Toronto, Ontario  
 M3B 3K4

**Attention:** Al Kiel  
 Partner  
**Administrator**

**AND TO:** **Superior Machine & Tool (Chatham) Limited**  
 227 William Street South  
 Chatham, Ontario  
 N7M 4T3

**Attention:** Mike Fife  
 Manager, Administrative Services  
**Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** in respect of the Plan under subsection 69(1) of the *Act*.

### **PROPOSED ORDER:**

The Retirement Plan for Hourly Employees of Superior Machine and Tool (Chatham) Limited, Registration No. 327601, be wound up in whole for those members of the Plan who ceased to be employed effective between July 7, 1999, and July 8, 1999.

### **REASONS FOR THE ORDER:**

1. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the *Act*.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer within the meaning of clause 69(1)(d) of the *Act*.
3. All or a significant portion of the business carried on by the employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the *Act*.
4. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "*Tribunal*"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
 5160 Yonge Street, 14th Floor  
 North York, Ontario  
 M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**THE ADMINISTRATOR IS REQUIRED,**

pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to the following persons:

**Zwaig Associates Inc.**

Suite 1470, Exchange Towers  
P.O. Box 17  
130 King Street West  
Toronto, Ontario  
M5X 1A9

**Attention:** Sean Hinkson  
Consultant

**Interim Receiver and Trustee  
in Bankruptcy for Superior  
Machine & Tool (Chatham)  
Limited**

DATED at North York, Ontario, this 29th day of August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "*Act*");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Act* in  
respect of the **Superior Machine and Tool  
(Chatham) Limited Retirement Plan for  
Salaried Employees, Registration  
Number 691642** (the "*Plan*");

**TO:** **Deloitte & Touche Inc.**  
**by its agent**  
**Morneau Sobeco**  
1500 Don Mills Road, Suite 500  
Toronto, Ontario  
M3B 3K4

**Attention:** Al Kiel  
Partner  
**Administrator**

**AND TO:** **Superior Machine & Tool**  
(Chatham) Limited  
227 William Street South  
Chatham, Ontario  
N7M 4T3

**Attention:** Mike Fife  
Manager, Administrative Services  
**Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** in  
respect of the Plan under subsection 69(1) of  
the *Act*.

### **PROPOSED ORDER:**

The Superior Machine and Tool (Chatham)  
Limited Retirement Plan for Salaried  
Employees, Registration No. 691642, be wound  
up in whole for those members of the Plan  
who ceased to be employed effective between  
July 7, 1999, and July 8, 1999.

### **REASONS FOR THE ORDER:**

1. The employer is bankrupt within the mean-  
ing of the *Bankruptcy and Insolvency Act*  
(Canada), R.S.C. 1985, c. B-3, as amended,  
pursuant to clause 69(1)(c) of the *Act*.
2. A significant number of members of the  
pension plan ceased to be employed by the  
employer as a result of the discontinuance  
of all or part of the business of the employ-  
er or as a result of the reorganization of the  
business of the employer within the mean-  
ing of clause 69(1)(d) of the *Act*.
3. All or a significant portion of the business  
carried on by the employer at a specific  
location was discontinued within the mean-  
ing of clause 69(1)(e) of the *Act*.
4. Such further reasons as may come to my  
attention.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "*Tribunal*"),  
pursuant to subsection 89(6) of the *Act*, if with-  
in thirty (30) days after this Notice of Proposal  
is served on you, you deliver to the Tribunal a  
written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be  
delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE  
TRIBUNAL, WITHIN THIRTY (30) DAYS  
FROM THE DATE THIS NOTICE OF  
PROPOSAL IS SERVED ON YOU, A  
WRITTEN NOTICE THAT YOU REQUIRE  
A HEARING, I MAY MAKE THE ORDER  
PROPOSED HEREIN.**



**THE ADMINISTRATOR IS REQUIRED,**  
pursuant to subsection 89(5) of the *Act*, to  
transmit a copy of this Notice of Proposal to  
the following persons:

**Zwaig Associates Inc.**

Suite 1470, Exchange Towers  
P.O. Box 17  
130 King Street West  
Toronto, Ontario  
M5X 1A9

**Attention:** Sean Hinkson  
Consultant

**Interim Receiver and Trustee  
in Bankruptcy for Superior  
Machine & Tool (Chatham)  
Limited**

DATED at North York, Ontario, this 29th day of  
August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Retirement Plan for the Hourly Employees of Superior Machine and Tool (Chatham) Limited, Registration Number 0327601**;

**TO:** **Morneau Sobeco**  
Suite 500  
1500 Don Mills Road  
Toronto, Ontario  
M3B 3K4

**Attention:** Mr. Al Kiel  
**Administrator**

**AND TO:** **Superior Machine and Tool (Chatham) Limited**  
277 William Street South  
Chatham, Ontario  
N7M 4T3

**Attention:** Mr. Mike Fife  
**Employer**

**AND TO:** **Zwaig Consulting Inc.**  
Suite 1560, Exchange Tower  
P.O. Box 17, 130 King Street West  
Toronto, Ontario  
M5X 1J5

**Attention:** Mr. Jeffrey D. Kerbel  
**Trustee in Bankruptcy and Interim Receiver and Manager**

## **Notice of Proposal to Make a Declaration**

### **WHEREAS:**

1. The Retirement Plan for Hourly Employees of Superior Machine and Tool (Chatham) Limited, Registration No. 327601 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator of the Plan on December 22, 1999, and Morneau Sobeco (the "Administrator") is the agent acting for Deloitte & Touche Inc.; and
4. The Administrator had requested from the Superintendent of Financial Services on September 27, 2000, that an Order be issued to wind up the Plan effective July 7, 1999; and
5. A Notice of Proposal to make an Order to wind up the Plan, dated August 29, 2001, effective from July 7, 1999, to July 8, 1999, was served on the administrator on September 6, 2001; and
6. The Administrator filed on August 10, 2001, an application for a declaration that the Guarantee Fund applies to the Plan in anticipation of making an application for an interim allocation of the Guarantee Fund; and



7. The said application for the declaration indicates that the Administration was forced to impose financial hardship on current retirees by reducing their pension payments to the level that the Plan can support;

**I PROPOSE TO CONSIDER TO MAKE A DECLARATION**, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Plan **FOR THE FOLLOWING REASONS:**

1. The funded ratio of the Plan has been estimated to be 62% with an estimated deficiency in wind up assets compared to wind up liabilities of \$3,128,000 as of July 7, 1999.
2. The employer, Superior Machine and Tool (Chatham) Limited, was assigned into bankruptcy on July 8, 1999.
3. The trustee in bankruptcy has advised the Administrator that there are no assets available to the trustee from the estate of Superior Machine and Tool (Chatham) Limited for realization.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 12th day of September, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act*, any notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Retirement Plan for the Salaried Employees of Superior Machine and Tool (Chatham) Limited, Registration Number 0691642;**

**TO:** **Morneau Sobeco**  
Suite 500  
1500 Don Mills Road  
Toronto, Ontario  
M3B 3K4

**Attention:** Mr. Al Kiel  
**Administrator**

**AND TO:** **Superior Machine and Tool (Chatham) Limited**  
277 William Street South  
Chatham, Ontario  
N7M 4T3

**Attention:** Mr. Mike Fife  
**Employer**

**AND TO:** **Zwaig Consulting Inc.**  
Suite 1560, Exchange Tower  
P.O. Box 17, 130 King Street West  
Toronto, Ontario  
M5X 1J5

**Attention:** Mr. Jeffrey D. Kerbel  
**Trustee in Bankruptcy and Interim Receiver and Manager**

## **Notice of Proposal to Make a Declaration**

### **WHEREAS:**

1. The Retirement Plan for the Salaried Employees of Superior Machine and Tool (Chatham) Limited, Registration No. 0691642 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator of the Plan on December 22, 1999, and Morneau Sobeco (the "Administrator") is the agent acting for Deloitte & Touche Inc.; and
4. The Administrator had requested from the Superintendent of Financial Services, on September 27, 2000, that an Order be issued to wind up the Plan effective July 7, 1999; and
5. A Notice of Proposal to make an Order to wind up the plan, dated August 29, 2001, effective July 7, 1999, to July 8, 1999, was served on the Administrator on September 6, 2001; and
6. The Administrator filed on July 6, 2001, an application for a declaration that the Guarantee Fund applies to the Plan, in anticipation of making an application for an interim allocation of the Guarantee Fund; and



7. The said application for the declaration indicates that the Administrator was forced to impose financial hardship on current retirees by reducing their pension payments to the level that the Plan can support.

**I PROPOSE TO CONSIDER TO MAKE A DECLARATION** pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Plan **FOR THE FOLLOWING REASONS:**

1. The funded ratio of the Plan has been estimated to be 55% with an estimated deficiency in wind up assets compared to wind up liabilities of \$3,000,000 as of July 7, 1999.
2. The employer, Superior Machine and Tool (Chatham) Limited, was assigned into bankruptcy on July 8, 1999.
3. The trustee in bankruptcy has advised the Administrator that there are no assets available to the trustee from the estate of Superior Machine and Tool (Chatham) Limited for realization.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 12th day of September, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Act in respect of **The Registered Pension Plan for Employees of Med-Chem Laboratories Limited and Participating Affiliates, Registration Number 372896** (the "Plan");

**TO:** **Clarica Life Insurance Company**  
227 King Street South  
P.O. Box 1601  
Waterloo, Ontario  
N2J 4C5

**Attention:** Ms. Audrey Humphrey,  
Finals Associate  
**Administrator**

**AND TO:** **Med-Chem Health Care Limited (previously Med-Chem Laboratories Limited and Associated Companies)**  
8150 Sheppard Avenue East  
Scarborough, Ontario  
M1B 5K2

**Attention:** Ms. Anita Halverson,  
Director, Human Resources  
**Employer**

**AND TO:** **Scarborough Medical Laboratory Services Limited**  
8150 Sheppard Avenue East  
Scarborough, Ontario  
M1B 5K2

**Attention:** Ms. Anita Halverson,  
Director, Human Resources  
**Employer**

## **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** in respect of the Plan under subsection 69(1) of the Act.

### **PROPOSED ORDER:**

The Registered Pension Plan for Employees of Med-Chem Laboratories Limited and Participating Affiliates, Registration No. 372896, be wound up in part effective February 1, 1999, in respect of members and former members who were employed by Med-Chem Health Care Limited (previously Med-Chem Laboratories Limited and Associated Companies) and Scarborough Medical Laboratory Services Limited.

### **REASONS FOR THE ORDER:**

1. The participating employers in the Plan are Med-Chem Health Care Limited, MCTU Diagnostics Ltd. and Scarborough Medical Laboratory Services Limited.
2. There was a cessation or suspension of employer contributions to the pension fund of the Plan by Med-Chem Health Care Limited and Scarborough Medical Laboratory Services Limited, pursuant to clause 69(1)(a) of the Act.
3. Med-Chem Health Care Limited is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the Act.
4. Such further reasons as may come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED**, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to the following persons:

**Brewery, General and Professional Workers' Union**

238 Jane Street  
Toronto, Ontario  
M6S 3Z1

**Attention:** Mr. Cam Nelson, President  
**Union**

**PricewaterhouseCoopers Inc.**

145 King Street West  
Toronto, Ontario  
M5H 1V8

**Attention:** Mr. Robert M.C. Holmes  
Senior Vice-President  
**Trustee in Bankruptcy for Med-Chem Health Care Limited**

**Goodman Phillips & Vineberg Barristers & Solicitors**

250 Yonge Street  
Suite 2400  
Toronto, Ontario  
M5B 2M6

**Attention:** Ms. Michèle S. Altaras  
**Solicitors for PricewaterhouseCoopers Inc., Trustee in Bankruptcy**

DATED at North York, Ontario, this 27th day of September, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Act* in respect of **The Registered Pension Plan for Employees of Med-Chem Laboratories Limited and Participating Affiliates, Registration Number 372896** (the "*Plan*");

**TO:** **Clarica Life Insurance Company**  
227 King Street South  
P.O. Box 1601  
Waterloo, Ontario  
N2J 4C5

**Attention:** Ms. Audrey Humphrey,  
Finals Associate  
**Administrator**

**AND TO:** **Med-Chem Health Care Limited (previously Med-Chem Laboratories Limited and Associated Companies)**  
8150 Sheppard Avenue East  
Scarborough, Ontario  
M1B 5K2

**Attention:** Ms. Anita Halverson,  
Director, Human Resources  
**Employer**

**AND TO:** **MCTU Diagnostics Ltd.**  
8150 Sheppard Avenue East  
Scarborough, Ontario  
M1B 5K2

**Attention:** Ms. Anita Halverson,  
Director, Human Resources  
**Employer**

**AND TO:** **Scarborough Medical Laboratory Services Limited**  
8150 Sheppard Avenue East  
Scarborough, Ontario  
M1B 5K2

**Attention:** Ms. Anita Halverson,  
Director, Human Resources  
**Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** in respect of the Plan under subsection 69(1) of the *Act*.

### **PROPOSED ORDER:**

The Registered Pension Plan for Employees of Med-Chem Laboratories Limited and Participating Affiliates, Registration No. 372896, be wound up in whole effective June 30, 1999.

### **REASONS FOR THE ORDER:**

1. The participating employers in the Plan are Med-Chem Health Care Limited, MCTU Diagnostics Ltd. and Scarborough Medical Laboratory Services Limited.
2. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the *Act*.
3. Med-Chem Health Care Limited is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the *Act*.
4. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED**, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to the following persons:

**Brewery, General and Professional Workers' Union**  
238 Jane Street  
Toronto, Ontario  
M6S 3Z1

**Attention:** Mr. Cam Nelson, President  
**Union**

**PricewaterhouseCoopers Inc.**  
145 King Street West  
Toronto, Ontario  
M5H 1V8

**Attention:** Mr. Robert M.C. Holmes  
Senior Vice-President  
**Trustee in Bankruptcy for Med-Chem Health Care Limited**

**Goodman Phillips & Vineberg Barristers & Solicitors**  
250 Yonge Street  
Suite 2400  
Toronto, Ontario  
M5B 2M6

**Attention:** Ms. Michèle S. Altaras  
**Solicitors for PricewaterhouseCoopers Inc., Trustee in Bankruptcy**

DATED at North York, Ontario, this 27th day of September, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under sections 69 and 87 of the *Act* relating to the **Pension Plan for Employees of Proctor & Redfern Limited, Registration Number 0289579** (the "*Plan*");

**TO:** **Earth Tech (Canada) Inc.**

45 Green Belt Drive  
Don Mills, Ontario  
M3C 3K3

**Attention:** Stuart Angus  
President

**Administrator and Employer**

### **Notice of Proposal**

**I PROPOSE TO REFUSE TO MAKE AN ORDER** in respect of the *Plan* under sections 69 and 87 of the *Act* the terms of which are set out below.

### **PROPOSED REFUSAL:**

1. A refusal to order that the *Plan* be partially wound up under section 69 of the *Act* with respect to former employees of Proctor & Redfern Limited whose employment was terminated between and including 1994 and 1998;
2. A refusal to order that the former employees whose employment was terminated between and including 1994 and 1998 as well as former employees who had their pension benefits annuitized in 1998 and 1999 be included in the surplus sharing group identified in the Revised Wind Up Report dated December 2000 and a refusal to order that they be entitled to share in the surplus distribution on an equitable basis; and

3. A refusal to order under section 87 of the *Act* that Earth Tech (Canada) Inc. refund to the *Plan* any funds improperly withdrawn from the *Plan* to fund its own legal and actuarial costs.

### **REASONS FOR THE REFUSAL:**

1. The *Plan* was established by Proctor & Redfern Limited ("Proctor & Redfern") in 1962. By agreement dated June 18, 1999, Proctor & Redfern was sold to a company called Earth Tech (Canada) Inc. ("Earth Tech"). Proctor & Redfern was amalgamated with and continued operations as Earth Tech. As a condition of sale, it was required that the *Plan* be wound up in full effective June 18, 1999.
2. The Proctor & Redfern Board of Directors passed a motion on June 16, 1999, winding up the *Plan* in full effective June 18, 1999, and the *Plan* was amended December 1, 1999, to require that all surplus in existence at the date of wind up be distributed to persons who were members of the *Plan* in the period March 25, 1999 through June 18, 1999, inclusive (the "full wind up group"). A wind up report was submitted on or about December 1999, proposing to distribute surplus to members of the full wind up group only.
3. Subsequently, Proctor & Redfern discontinued all or a significant portion of the business carried on by Proctor & Redfern at its Kingston, Sault Ste. Marie and Thunder Bay locations in 1995 and 1996. On or about October 30, 2000, the Superintendent of Financial Services issued a Notice of Proposal under clause 69(1)(e) of the *Act* to order that the *Plan* "be wound up in part in respect of those members of the *Plan* who were employed by Proctor & Redfern ... and



who ceased to be employed by the Employer [Proctor & Redfern] effective between June 9, 1995 and August 1, 1996 as a result of the discontinuance of all or a significant portion of the business carried on by the Employer at its Kingston, Sault Ste. Marie and Thunder Bay Locations" (the "partial wind up group"). During the 30 days following the issuance of the October 30, 2000 Notice of Proposal, and to date, no party has requested a hearing under section 89 of the *Act* in respect of the October 30, 2000 Notice of Proposal.

4. A revised Wind Up Report was filed in December 2000 (the "Revised Wind Up Report") which included the persons in the partial wind up group in a single surplus sharing group with the members of the full wind up group. On or about February 22, 2001, the Superintendent approved the distribution of assets, with the exception of surplus, in accordance with the original wind up report.
5. Certain former employees of Proctor & Redfern ("certain former employees") have requested that the Superintendent issue an order requiring, *inter alia*, the partial wind up of the Plan with respect to former employees whose employment was terminated between and including 1994 and 1998 and that those former employees be included in the proposed surplus sharing group identified in the Revised Wind Up Report and be entitled to share in the distribution of surplus in the same manner as all other members of that surplus sharing group. In support of their request for such an order, these certain former employees allege that the termination of their employment with Proctor & Redfern was the result

of a reorganization within the meaning of clause 69(1)(d) of the *Act* that affected all of Proctor & Redfern's locations. Similarly, other former employees (other than these certain former employees) (referred to herein as the "other former employees") have also requested that they be added to the partial wind up and surplus sharing group on the same grounds although their request is not limited to the dates stipulated in the request of the certain former employees.

6. The certain former employees and other former employees requesting the order were not employed at the locations that were the subject of the proposed partial wind up in the October 30, 2000 Notice of Proposal. In addition, some of the certain former employees and other former employees were terminated outside the partial wind up period (June 9, 1995 to August 1, 1996) set out in the October 30, 2000 Notice of Proposal. Therefore, none of these certain former employees or other former employees are entitled to be included in the surplus sharing group identified in the Revised Wind Up Report under the terms of the October 30, 2000 Notice of Proposal.
7. There is no evidence to indicate that during the period 1994 to 1998 and prior, Proctor & Redfern was engaged in a reorganization or discontinuance of its business within the meaning of clause 69(1)(d) of the *Act*. Nor is there any evidence that significant numbers of Plan members ceased employment within the meaning of clause 69(1)(d) of the *Act* during the period 1994 to 1998 and prior. Therefore, there is no basis to conclude that during the period 1994 to 1998 and prior that a significant number of Plan members ceased to be employed as a result of a



discontinuance of all or part of the business or as a result of the reorganization of the business within the meaning of clause 69(1)(d) of the *Act*.

8. Therefore, there is no reason under clause 69(1)(d) of the *Act* to order that the partial wind up previously proposed be extended to any former employees other than the former employees encompassed by the terms of the October 30, 2000 Notice of Proposal. Nor is there any reason to order an additional wind up covering employees terminated during the period 1994 to 1998 and prior. Nor is there any basis to order that any former employees other than the former employees encompassed by the terms of the October 30, 2000 Notice of Proposal be added to the surplus sharing group identified in the Revised Wind Up Report.
9. The certain former employees also requested that those former employees who had their benefits under the Plan annuitized in 1998 and 1999 be included in the proposed surplus sharing group identified in the Revised Wind up Report and be eligible to share in the surplus funds on the same basis as the members of that group.
10. The Plan documents, from the inception of the Plan, indicate that benefits under the Plan are normally to be provided by the purchase of an annuity. Actuarial reports filed indicate that annuitization was used to pay the benefits of former members from time to time during the history of the Plan. Earth Tech has indicated that the purchase of annuities was for the purpose of reducing exposure to indexed benefits and that the purchase was contemplated in advance of the discussions regarding the sale of Proctor & Redfern to Earth Tech and in advance of the contemplation of any wind up of the Plan. The affected former employees were given notice of the intention to purchase annuities in respect of their pension entitlements in May 1998 and the actual purchase of annuities did not occur immediately prior to the sale of Proctor & Redfern or the wind up of the Plan.
11. Therefore, those former employees who had their benefits under the Plan annuitized in 1998 and 1999 should not be included in the proposed surplus sharing group identified in the Revised Wind Up Report.
12. The certain former employees have also requested that the Superintendent issue an order requiring Earth Tech to refund to the Plan any funds improperly withdrawn from the Plan to fund Earth Tech's own legal and actuarial costs. Article 15.04 of the Plan states that "[a]ll reasonable fees and expenses, both internal and external for administrative services, accounting and auditing services, investment and actuarial services, custodial and legal fees under the Plan may be paid or reimbursed (if first paid by the Company) from the Pension Fund." In addition, Article 16.04 (a) specifically empowers the administrator to "consult with and obtain opinions, advice and information from any lawyer, auditor, accountant, Actuary or other expert".
13. There is no evidence that Earth Tech has improperly withdrawn funds from the Plan to pay its own legal and actuarial costs or that the provisions of the Plan in respect of legal and actuarial costs have been contravened. Therefore, there is no reason to order Earth Tech to refund to the Plan any funds improperly withdrawn from the Plan.



14. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 3rd day of October, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

cc:

**Koskie Minsky  
Barristers & Solicitors**  
20 Queen St. West  
Suite 900, Box 52  
Toronto, Ontario  
M5H 3R3

**Attention:** Michael Mazzuca  
**Solicitors for Certain  
Former Employees**

**Blake, Cassels, Graydon LLP  
Barristers & Solicitors**

Box 25, Commerce Court West  
199 Bay Street  
Toronto, Ontario  
M5L 1A9

**Solicitors for the  
Administrator and Employer**

Ron E. Train  
1235 Huntingwood Drive, Unit 13  
Scarborough, Ontario  
M1S 1K7  
D.W. Scott  
436 Ambrose Street  
Thunder Bay, Ontario  
P7B 1M6

Don Boissoneault  
662 O'Brien Street  
North Bay, Ontario  
P1B 5W6

Ted Goddard  
50 Bryant Road  
Markham, Ontario  
L3P 5Z2

Delores Forster  
1774 Shady Brook Drive  
Pickering, Ontario  
L1V 3A5

**Other Former Employees**

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of **The Tarmac Canada Inc. Pension Plan for Employees of Tarmac Minerals Canada Who Were Members of the Former Harnden & King Construction (Ontario) Limited Pension Plan, Registration Number 255091**;

**TO:** **Tarmac Canada Inc.**  
80 North Queen St.  
Toronto, Ontario  
M8Z 5Z6

**Attention:** Mr. Randy Roe  
Vice-President, Finance  
**Applicant and Employer**

### Notice of Proposal

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of The Tarmac Canada Inc. Pension Plan for Employees of Tarmac Minerals Canada Who Were Members of the Former Harnden & King Construction (Ontario) Limited Pension Plan, Registration No. 255091 (the "*Plan*"), to Tarmac Canada Inc. in the amount of \$70,957, as at December 15, 1997, less 50% of the expenses, plus 50% of the investment earnings to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that the entitlements of all members, former members and other sharing persons have been settled.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Tarmac Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 15, 1997.
3. As at December 15, 1997, the surplus in the Plan was estimated at \$141,914.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 73.33% of the active members and other members (as defined in the application), and 66.67% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) 50% to the Employer; and
  - b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan, less 50% of the expenses related to the wind up of the Plan plus 50% of investment earnings.
7. The application appears to comply with section 78 and subsections 79(3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 5th day of October, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

cc: Doug Andrews  
Aon Consulting Inc.

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for the Employees of John T. Hepburn, Limited, Registration Number 260356;**

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto, Ontario  
M5H 1B6

**Attention:** Mr. Lawrence A. Contant  
**Administrator**

**AND TO:** **John T. Hepburn Limited**  
7450 Torbram Road  
Mississauga, Ontario  
L4T 1G9

**Attention:** Mr. Robert G. Hepburn, Secretary  
**Employer**

**AND TO:** **Doane Raymond Limited**  
19th Floor, South Tower  
Royal Bank Plaza  
200 Bay Street, Box 55  
Toronto, Ontario  
M5J 2P9

**Attention:** Ms. Julie Savage, Manager  
**Trustee in Bankruptcy**

**AND TO:** **United Steelworkers of America**  
1291 Matheson Boulevard East  
Mississauga, Ontario  
L4W 1R1

**Attention:** Ms. Peggy McComb  
**Union**

## **Notice of Proposal to Make a Declaration**

### **WHEREAS:**

1. The Pension Plan for the Employees of John T. Hepburn, Limited, Registration No. 260356 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on August 19, 1994; and
4. The Plan was wound up effective July 6, 1994, by order of the Superintendent of Pensions;

**I PROPOSE TO CONSIDER TO MAKE A DECLARATION**, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Plan **FOR THE FOLLOWING REASONS:**

1. The funded ratio of the Plan at the wind up date of the Plan, July 6, 1994, was estimated to be 100%.
2. At September 30, 2000, there were net assets of \$1,536,700.00, available in the Plan to discharge the remaining liability for benefits amounting to \$1,749,900.00.
3. The estimated claim against the Guarantee Fund at September 30, 2000, was \$213,200.00.
4. The employer, John T. Hepburn Limited, was placed into bankruptcy effective July 6, 1994.



5. The trustee in bankruptcy for John T. Hepburn Limited has advised the Administrator that there are no funds available from the estate of John T. Hepburn Limited to make payment to the Plan.
6. The Administrator is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario this 10th day of October, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Deputy Superintendent, Pension Division to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Swift Adhesives Salaried Employees Pension Plan**, Registration Number 956219;

**TO:** **Reichhold Limited**  
c/o Reichhold Inc.  
P.O. Box 13582  
Research Triangle Park  
Raleigh Durham, North Carolina  
27709-3582  
U.S.A.

**Attention:** Trent Rhyne  
Compensation and Benefits  
Director  
**Applicant and Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment out of the Swift Adhesives Salaried Employees Pension Plan, Registration No. 956219 (the "Plan"), to Reichhold Limited, as follows:

- (a) An amount shall be paid or allocated to the Applicant equal to:
- (i) \$541,305, the value of the liabilities as determined by the Plan Actuary in consultation with the actuary for the Plan members for early retirement benefits as negotiated and grow-in benefits required to be provided under the *Pension Benefits Act*, R.S.O. 1990, for Ontario members, which pursuant to the Surplus Sharing Settlement Agreement shall be provided to all eligible

employees of the Applicant accruing benefits under the Plan at any time in the period from November 13, 1998 through the Plan wind up date (April 30, 2000), regardless of jurisdiction of residence or employment and grow-in benefits as negotiated together with interest thereon from the date as at which each value is determined to the date of payment or allocation to the Application at the rates of interest used to determine the liability as follows:

<b>Interest Rate</b>	<b>Value of Liabilities</b>
6.5% per annum	\$355,344
5.0% per annum	\$105,809
5.75% per annum	\$ 80,152
Total	\$541,305
plus	

- (ii) \$2.1 million as at April 30, 2000, together with interest thereon at the rate of 6.5%, being the rate of return used to determine the Plan's liability for transfer values as determined by the Actuary from April 30, 2000, to the date of payment; plus
- (iii) 50% of the surplus remaining after making provision for the payments contemplated in (i) and (ii) above together with net earnings or losses thereon (estimated to be, as at April 30, 2000, \$3,278,154).

### **I PROPOSE TO MAKE THE ORDER**

effective only after the Applicant satisfies me that the entitlements of all members and former members have been settled.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Reichhold Limited is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective April 30, 2000.



3. As at April 30, 2000, the surplus in the Plan was estimated at \$9,197,614.
4. The court has ordered that the Plan provides for payment of surplus to the Employer on the wind up of the Plan in respect of subsection 79(3)(b) of the *Act*.
5. The application discloses that by written agreement made by the Employer, and 94.1% of the active members and other members (as defined in the application) and 79.2% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) 64.4% to the Employer; and
  - b) 35.6% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of \$541,305 as at April 30, 2000, plus \$2.1 million together with interest at the rate of 6.5% from April 30, 2000, to the date of payment plus 50% of the surplus remaining after making provision for the aforementioned payments together with net earnings or losses.
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 10th day of October, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

cc: Kim Ozubko  
Blake, Cassels & Graydon LLP

NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Staff Pension Plan for the Employees of 733907 Ontario Ltd., Registration Number 597245**;

**TO:** **733907 Ontario Ltd.**  
14 Westwin Court  
Brampton, Ontario  
L6T 4T5

**Attention:** Mr. Morris Leider  
**733907 Ontario Ltd.,**  
**President**

### Notice of Proposal

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment out of the Staff Pension Plan for Employees of 733907 Ontario Ltd., Registration No. 597245 (the "Plan"), to 733907 Ontario Ltd., in the amount of \$25,405.78, as at July 31, 2000, adjusted for expenses plus investment earnings thereon to the date of the payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that the sole member's entitlement from the plan surplus has been transferred out of the pension plan and paid to the member.

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. 733907 Ontario Ltd. is the employer as defined in the Plan.
2. The Plan was wound up, effective January 1, 1997.

3. As at January 1, 1997, the surplus in the Plan was estimated at \$35,811.56.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and the sole member, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) 50% to the Employer; and
  - b) 50% to the member.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan after adding investment earnings and deducting the expenses related to the wind up of the Plan.
7. The application appears to comply with section 78 and subsection 79 (3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 11th day of October, 2001.

K. David Gordon

Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

cc: Timothy B. Lawrence, F.S.A., F.C.I.A.,  
Wright, Mogg & Associates Ltd.

NOTE – PURSUANT to section 112 of the Act any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Getty Mines Limited Retirement Plan, Registration Number 0915538**;

**TO:** **Getty Mines International, Inc.**  
c/o Stikeman, Elliot  
Barristers & Solicitors  
5300 Commerce Court West  
53rd Floor, P.O. Box 85  
Toronto, Ontario  
M5L 1B9

**Attention:** Mr. Sean F. Dunphy  
Ms. Jasmine T. Akbarali  
Solicitors for the Applicant  
**Applicant and Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment out of the Getty Mines Limited Retirement Plan, Registration No. 0915538 (the "Plan"), to Getty Mines International Inc. in the amount of approximately \$141,000 as at May 29, 2001, adjusted for expenses and investment earnings on the fund to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that surplus entitlements of the 15 former members of the Mines Plan have been paid or otherwise settled in accordance with the Settlement Agreement.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Getty Mines International Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective July 7, 1986.
3. As at May 29, 2001, the surplus in the Plan was estimated at approximately \$165,000.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that, by Court Order obtained on consent by the Employer, the surplus in the Plan at the date of payment, is to be distributed:
  - a) approximately \$141,000 to the Employer; and
  - b) \$24,000, less any necessary deductions, to the beneficiaries of the Plan as defined in the Settlement Agreement attached thereto.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(2) of the Regulation, for consent of the Superintendent of Financial Services to the payment of approximately \$141,000 of the surplus in the Plan as at May 29, 2001.
7. The application appears to comply with section 78 and subsection 79(3) (a) and (b) of the *Act* and with clause 8(2) and subsections 28(5), and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>



Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 11th day of October, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services  
cc: Ms. Elizabeth Pillon, Stikeman Elliot

NOTE - PURSUANT to section 112 of the Act any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Procter & Gamble Core Pension Plan, Registration Number 681163**;

**TO:** **Mr. Peter Beca, F.C.I.A.**  
Senior Vice President  
Aon Consulting Inc.  
145 Wellington Street West,  
Suite 500  
Toronto, Ontario  
M5J 1H8  
for Procter & Gamble Inc.,  
**Applicant and Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment out of the Procter & Gamble Core Pension Plan, Registration No. 681163 (the "Plan"), to Procter & Gamble Inc. in the amount of approximately \$836,800, as at January 31, 1999, adjusted for all fees and expenses attributable to the partial wind up effective January 29, 1999, resulting from the closure of the Hamilton plant, plus investment earnings to date of payment on all of the surplus attributable to said partial wind up.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that the administrator of the pension plan has provided for the payment of all liabilities of the pension plan, including any enhancements arising from the surplus sharing agreement, to

which members, former members and any other persons are entitled on the termination of the pension plan.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Procter & Gamble Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was partially wound up, effective January 29, 1999.
3. As at January 31, 1999, the surplus in the Plan was estimated at \$1,510,100.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan in whole or in part.
5. The application discloses that by written agreement made by the Employer, 96.85% of the active members and 100% of the former members and other persons entitled to payments, the surplus in the Plan at January 31, 1999, is to be distributed:
  - a) 44.6% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement, and
  - b) the remaining surplus (55.4%), adjusted for all fees and expenses, plus investment earnings on all of the surplus attributable to attributable to the partial wind up to date of payment, to the Employer.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 55.4% of the surplus in the Plan (after adding 100% of investment earnings and deducting 100% of the expenses related to the partial wind up of the Plan.)
7. The application appears to comply with section 78 and subsections 79(3)(a) and (b)



of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 11th day of October, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

cc: Mr. David J. McKenzie,  
Procter & Gamble Inc.

Mr. Paul W. Litner, Osler,  
Hoskin & Harcourt LLP

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to (Refuse to) Make an Order under section 87 of the *Act* relating to the **AFG Industries Ltd.**

**Retirement Plan, Registration Number 290700** (the "*Plan*");

**TO:** **AFG Industries Inc.**  
Corporate Headquarters  
P.O. Box 292  
Kingsport, Tennessee  
37662  
U.S.A.

**Attention:** Rick Stapleton  
Director, Human Resources  
**Employer and Administrator  
of the Plan**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** in respect of the *Plan* under section 87 of the *Act*.

### **PROPOSED ORDER:**

An order that the *Plan* administrator include credited service under the Glaverbel *Plan* (as defined herein) in the calculation of Ms. Joan Jay's pension benefit under the *Plan*.

### **REASONS FOR THE ORDER:**

1. Ms. Jay was an employee of Crystal Glass and Plastics Ltd. ("*Crystal Glass*").
2. On or about January 10, 1974, Crystal Glass was acquired by Glaverbel Canada Limited or a related company (the "*Glaverbel Group*"). As a result of this acquisition, Ms. Jay became an employee of the Glaverbel Group.
3. The Glaverbel Group provided a contributory pension plan for its regular salaried employees (the "*Glaverbel Plan*").
4. Membership in the Glaverbel *Plan* was mandatory for all employees hired after 1969. Employees became eligible to participate in the Glaverbel *Plan* on the first day of January following completion of one year of service.
5. There is no exception in the Glaverbel *Plan* or in any amendment to the *Plan* for individuals who became employees as the result of the acquisition of Crystal Glass. While the Glaverbel *Plan* contained a provision which permitted the administrator to waive the eligibility requirements referred to in paragraph 4 (i.e., the waiting period), this provision did not operate to permit the administrator to except an employee from membership in the Glaverbel *Plan* once he or she became eligible. It is therefore reasonable to conclude that Ms. Jay became a member of the Glaverbel *Plan* upon meeting the eligibility requirements.
6. The Glaverbel Group was subsequently acquired by Ford Glass Limited. In 1983, the assets of the Glaverbel *Plan* were transferred into the pension plan sponsored by Ford Glass Limited (the "*Ford Plan*") and the Glaverbel *Plan* was discontinued. The *Ford Plan* became the *Plan*.
7. The benefit formula in the *Ford Plan* and the *Plan* recognizes years of credited service under the Glaverbel *Plan* for purposes of determining the pension benefits of former Glaverbel Group of employees. Accordingly, Ms. Jay is entitled to have her years of credited service under the Glaverbel *Plan* included in the calculation of her pension benefit.
8. The *Plan* administrator has failed to include her years of credited service under the



Glaverbel Plan in the calculation of Ms. Jay's pension benefit.

9. Subsection 87(2) of the *Act* allows the Superintendent to make an order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the regulations or the pension plan.
10. Section 19(2) of the *Act* requires the administrator of a pension plan to ensure that the pension plan and the pension fund are administered in accordance with the filed documents in respect of which the Superintendent has issued a certificate of registration.
11. Accordingly, I am of the opinion that in failing to include credited service under the Glaverbel Plan in the calculation of Ms. Jay's pension benefit, the Plan administrator is not administering the Plan in compliance with the requirements of the *Act* and the filed Plan documents.
12. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 16th day of October, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

## Orders that Pension Plans be Wound Up

**IN THE MATTER OF** the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, respecting **The Pension Plan for the Employees of Tee-Comm Electronics Inc., Registration Number 0905075;**

**TO:** **The Manufacturers' Life Insurance Company**  
500 King Street North,  
Waterloo, Ontario  
N2J 4C6

**Attention:** Ms. Karen Osborne  
Discontinuance Underwriter  
**Administrator of The Pension Plan for the Employees of Tee-Comm Electronics Inc.**

**AND TO:** **Tee-Comm Electronics Inc.**  
775 Main Street East,  
Milton, Ontario  
L9T 3Z3

**Attention:** Reg Tiessen,  
Director of Finance  
**Employer**

### Order

**ON** the 9th day of May 2001, former Superintendent of Financial Services issued a Notice of Proposal to make an Order (the "Notice of Proposal") to the Employer and to the Administrator of the Plan, pursuant to subsection 69(1) of the *Act*, that The Pension Plan for the Employees of Tee-Comm Electronics Inc., Registration No. 0905075, be wholly wound up effective June 30, 1997.

**NO REQUEST** for a hearing has been received by the Financial Services Tribunal in connection with this matter.

**IT IS THEREFORE ORDERED** that The Pension Plan for the Employees of Tee-Comm Electronics Inc., Registration No. 0905075 (the "Plan"), be wholly wound up effective June 30, 1997.

### **THE REASONS FOR THIS ORDER:**

1. There has been a cessation or suspension of employer contributions to the pension fund;
2. The employer is bankrupt within the meaning of the *Bankruptcy Act*;
3. A significant number of members have ceased to be employed by the employer as the result of the discontinuance of the business of the employer.
4. All of the business of the employer has been discontinued.

**THE ADMINISTRATOR IS REQUIRED**, pursuant to subsection 69(2) of the *Act*, to give notice of this Order to the all the members and former members of the Plan and to the following persons:

**Ernst & Young Inc.,**  
P.O. Box 251  
222 Bay Street  
Toronto, Ontario  
M5K 1J7

**Attention:** Sharon Hamilton  
**Receiver for Tee-Comm Electronics Inc.**



**KPMG Inc.**

Suite 3300, Commerce Court West  
P.O. Box 31, Stn. Commerce Court  
Toronto, Ontario  
M5L 1B2

**Attention:** Jack Richards, Vice President  
**Trustee In Bankruptcy for**  
**Tee-Comm Electronics**

DATED at North York, Ontario, this 31st day of  
July, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

**IN THE MATTER OF** the *Pension Benefits Act*  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, respecting the **Employee  
Retirement Plan for the Employees of  
Murphy Distributing Ltd., Registration  
Number 512137**;

**TO:** **London Life Insurance  
Company**  
255 Dufferin Avenue  
London, Ontario  
N6A 4K1

**Attention:** Nancy Galpin  
Customer Service Specialist  
**Administrator of the  
Employee Retirement Plan  
for the Employees of Murphy  
Distributing Ltd.,  
Registration Number 512137  
(the "Administrator")**

**AND TO:** **Murphy Distributing Ltd.**  
P.O. Box 427  
37 Woodyatt Drive  
Brantford, Ontario  
N3T 5M3

**Attention:** Cameron Manning  
Chief Financial Officer  
**Employer**

### **Order**

**ON** the 29th day of May 2001, the  
Superintendent of Financial Services issued a  
Notice of Proposal to make an Order (the  
"Notice of Proposal") to the Employer and to  
the Administrator pursuant to subsection 69(1)  
of the *Act*, that the Employee Retirement Plan  
for the Employees of Murphy Distributing Ltd.,

Registration No. 512137 be wholly wound up  
effective November 26, 1999.

**NO REQUEST** for a hearing has been received  
by the Financial Services Tribunal in connec-  
tion with this matter.

**IT IS THEREFORE ORDERED** that the  
Employee Retirement Plan for the Employees of  
Murphy Distributing Ltd., Registration No.  
512137 (the "Plan"), be wholly wound up effec-  
tive November 26, 1997.

### **THE REASONS FOR THIS ORDER:**

1. There has been a cessation or suspension of  
employer contributions to the pension  
fund;
2. The employer failed to make contributions  
to the pension fund as required by the *Act*  
or the regulations made under the *Act*;
3. A significant number of members of the  
Plan ceased to be employed by the employ-  
er as a result of the discontinuance of all or  
part of the business of the employer or as a  
result of the reorganization of the business  
of the employer.

**THE ADMINISTRATOR IS REQUIRED**,  
pursuant to subsection 69(2) of the *Act*, to give  
notice of this Order to the following persons:

**Cavalluzzo Hayes Shilton  
McIntyre & Cornish**  
43 Madison Avenue  
Toronto, Ontario  
M5R 2S2

**Attention:** Elizabeth Shilton  
Counsel

**Legal Representative for the  
Retail Wholesale Canada  
Division of the C.A.W.,  
Local 414**



**Schonfeld Inc.**

390 Bay Street, Suite 2400  
Toronto, Ontario  
M5H 2Y2

**Attention:** S. Harland Schonfeld, CA, CIP  
**Trustee in Bankruptcy for  
Murphy Distributing Ltd.**

DATED at North York, Ontario, this 16th day of  
August, 2001.

Tom Golfetto, Director (Acting)

Pension Plans Branch,

by delegated authority from

K. David Gordon,

Deputy Superintendent, Pension Division

by delegated authority from

Superintendent of Financial Services

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");  
**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order, pursuant to section 69 of the *Act*, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration Number 937458** (the "*Plan*");

**TO:** **Deloitte & Touche Inc.**  
**by its agent**  
**Morneau Sobeco**  
 1500 Don Mills Road, Suite 500  
 Toronto, Ontario  
 M3B 3K4

**Attention:** Julie Seewald  
 Senior Analyst  
**Administrator**

**AND TO:** **Royal Oak Mines Inc.**  
 P.O. Box 2010  
 Timmins, Ontario  
 P4N 7X7

**Attention:** Rachel A. Pineault  
 Pension Administrator  
**Employer**

## **Order**

**ON** the 18th day of June 2001, the Superintendent of Financial Services issued to the Employer and to the Administrator of the Plan, pursuant to subsection 69(1) of the *Act*, a Notice of Proposal to make an Order (the "Notice of Proposal"), that the Plan be wholly wound up effective between September 1, 1999 and February 14, 2000.

**NO REQUEST** for a hearing from the Employer or from the Administrator has been received by the Financial Services Tribunal in connection with this matter.

**IT IS THEREFORE ORDERED** that the Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration No. 937458, be wholly wound up effective between September 1, 1999 and February 14, 2000.

## **THE REASONS FOR THIS ORDER:**

1. There was a cessation or suspension of employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the *Act*.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations within the meaning of clause 69(1)(b) of the *Act*.
3. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer within the meaning of clause 69(1)(d) of the *Act*.
4. All or a significant portion of the business carried on by the employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the *Act*.

**THE ADMINISTRATOR IS REQUIRED**, pursuant to subsection 69(2) of the *Act*, to give notice of this Order to the following persons:

**PricewaterhouseCoopers Inc.**  
 145 King Street West  
 18th Floor,  
 Toronto, Ontario  
 M5H 1V8

**Attention:** Jim Reive  
 Sr. Associate, Financial Advisory  
 Services  
**Interim Receiver for Royal  
 Oak Mines Inc.**



DATED at North York, Ontario, this 20th day of August, 2001.

K. David Gordon

Deputy Superintendent, Pension Division

by delegated authority from

Superintendent of Financial Services

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");  
**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order, pursuant to section 69 of the *Act*, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration Number 937466** (the "*Plan*");

**TO:** **Deloitte & Touche Inc.**  
**by its agent**  
**Morneau Sobeco**  
 1500 Don Mills Road, Suite 500  
 Toronto, Ontario  
 M3B 3K4

**Attention:** Julie Seewald  
 Senior Analyst  
**Administrator**

**AND TO:** **Royal Oak Mines Inc.**  
 P.O. Box 2010  
 Timmins, Ontario  
 P4N 7X7

**Attention:** Rachel A. Pineault  
 Pension Administrator  
**Employer**

## **Order**

**ON** the 18th day of June 2001, the Superintendent of Financial Services issued to the Employer and to the Administrator of the Plan, pursuant to subsection 69(1) of the *Act*, a Notice of Proposal to make an Order (the "Notice of Proposal") that the Plan be wholly wound up effective between September 20, 1999 and December 23, 1999.

**NO REQUEST** for a hearing from the Employer or the Administrator has been received by the Financial Services Tribunal in connection with this matter.

**IT IS THEREFORE ORDERED** that the Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration No. 937466, be wholly wound up effective between September 20, 1999 and December 23, 1999.

## **THE REASONS FOR THIS ORDER:**

1. There was a cessation or suspension of employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the *Act*.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations within the meaning of clause 69(1)(b) of the *Act*.
3. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer within the meaning of clause 69(1)(d) of the *Act*.
4. All or a significant portion of the business carried on by the employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the *Act*.

**THE ADMINISTRATOR IS REQUIRED**, pursuant to subsection 69(2) of the *Act*, to give notice of this Order to the following persons:

**Sack Goldblatt Mitchell  
 Barristers & Solicitors**  
 20 Dundas Street West  
 Suite 1130, P.O. Box 180  
 Toronto, Ontario  
 M5G 2G8

**Attention:** Michael Kainer  
**Legal Representative for the  
 Union, the United  
 Steelworkers of America**



**PricewaterhouseCoopers Inc.**

145 King Street West  
18th Floor,  
Toronto, Ontario  
M5H 1V8

**Attention:** Jim Reive  
Sr. Associate, Financial  
Advisory Services

**Interim Receiver for Royal  
Oak Mines Inc.**

DATED at North York, Ontario, this 20th day of  
August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

## Orders that a Registration be Revoked

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to revoke the registration of **Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration Number 1062363** (the "Plan"), pursuant to section 18 of the *Act*;

**TO:** **Fiducie du Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center**

**Attention:** Michel Rolland  
Designated Trust Administrator  
40 Place du Commerce  
P.O. Box 63029  
Verdun (Nuns Island), Québec  
H3E 1V6

Éric Ferron  
Trustee  
3485 des Érables  
Montreal, Québec  
H2K 3V6

Michel Dion  
Trustee  
450 Laurier Avenue  
Québec City, Québec  
G1R 2L2

Guy Patrick Léveillé  
Trustee  
1009 Émile Nelligan  
Boucherville, Québec  
J4B 5J1

**Named Administrator**

### Order

**ON** August 10, 2001, the Superintendent of Financial Services issued a Notice of Proposal pursuant to subsection 18(1) of the *Act* to the named administrator to revoke the registration of the Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration No. 1062363 (the "Plan").

**NO REQUEST** for a hearing has been delivered to the Financial Services Tribunal within the time prescribed by subsection 89(6) of the *Act*.

**IT IS THEREFORE ORDERED** that the registration of the Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration No. 1062363 (the "Plan") be revoked for the following reasons:

### **Named Administrator**

1. The application for registration of the Plan indicates that the Canadian Corporation Creation Center ("CCCC") is the employer for the Plan. The text for the Plan states that the administrator for the Plan is the Fiducie du Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center (Pension Trust Fund of the Employees and Members of Canadian Corporation Creation Center (the "Pension Trust Fund"). The Trust Agreement for the Plan dated June 21, 2000, states that Michel Dion, Éric Ferron and Guy Patrick Léveillé are trustees. Michel Rolland is the Designated Trust Administrator.
2. Section 8 of the *Act* provides an exhaustive list of those entities who are eligible to act as administrators of a pension plan under the *Act*. Section 8 does not permit a pension trust fund to act as an administrator of



a single employer pension plan. The Plan purports to be a single employer plan. Therefore, the Pension Trust Fund is not eligible to act as the administrator of the Plan.

### **Missing Information in the Plan Documents**

3. Subsection 10(1) of the *Act* requires that the pension plan set out certain prescribed information. The Plan does not set out the following information in contravention of the following subclauses of section 10(1):
  - a. The requirements for entitlement to any pension benefit or ancillary benefit (subclause 5);
  - b. The mechanism for establishing and maintaining the pension fund (subclause 10);
  - c. The treatment of surplus during the continuation of the Plan and on windup of the Plan (subclause 11); and
  - d. The method of allocation of the assets of the Plan on windup (subclause 13).

### **Declaration**

4. Clause 9(2)(e.1) of the *Act* states that an application for registration of a pension plan shall be made by filing, *inter alia*, a "certification in a form approved by the Superintendent and signed by the applicant in which the applicant attests that the pension plan complies with [the] *Act* and regulations." In the application for registration of the Plan, the named administrator attested that:
  - a. the documents that create and support the Plan complied with the *Act* and regulations; and
  - b. that the named administrator was aware that the obligation to ensure that the documents filed comply with the *Act* and

regulations is the responsibility of the administrator and that this obligation was fulfilled.

5. The named administrator has contravened clause 9(2)(e.1) of the *Act* in that the attestation provided in the application for registration was false because the documents that create and support the Plan do not comply with the *Act* as set out above.

### **Members of the Pension Plan**

6. Sections 27 and 28 of the Plan state that only employees of an employer that belongs to the Plan are eligible to participate in the Plan. Section 1 of the *Act* defines an employer as a "the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related."
7. The Superintendent has information which indicates that the Plan is accepting transfers of funds from locked-in retirement accounts or other similar prescribed retirement savings arrangements from individuals who do not receive remuneration from an employer that belongs to the Plan. Therefore, such persons are not employees, within the meaning of section 1 of the *Act*, of an employer that belongs to the Plan. The Plan's acceptance of such transfers contravenes the terms of the Plan.
8. Clause 19(3)(a) of the *Act* states that the administrator of a pension plan shall ensure that the pension plan and pension fund are administered in accordance with the "filed documents in respect of which the Superintendent has issued an acknowledgment of application for registration or a certificate of registration". The acceptance of fund transfers in respect of individuals

who are not employees of an employer that belongs to the Plan is a contravention of section 27 and 28 of the Plan and, therefore, constitutes a contravention of clause 19(3)(a) of the *Act*.

9. The transfer of funds from locked-in retirement accounts or other similar prescribed retirement savings arrangements in respect of account holders who are not members of the Plan constitutes a commutation or surrender of a prescribed savings arrangement contrary to section 67 of the *Act* because such funds are not capable of being commuted or surrendered (subject to certain exceptions which do not apply in this case).

#### **Transfer of Funds from the Plan**

10. Subsection 22(1) of the *Act* states that "the administrator of a pension plan shall exercise the care, diligence and skill required in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person." Subsection 22(4) states that an administrator "shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund."
11. The Superintendent has information that indicates that funds from the pension fund in respect of the Plan have been transferred from the pension fund to bank accounts held by companies named National Business Investment In Trust Inc. ("NBI In Trust"), National Business Investment Canada Inc. ("NBI Canada") and/or CCCC (the employer under the application for registration). In filings with the Companies Branch of the Ontario Ministry of Consumer and Commercial Relations,

Michel Rolland, Designated Trust Administrator for the Pension Trust Fund, is listed as the administrator for NBI In Trust. In banking records, Michel Rolland is listed as the "owner/signing officer" for NBI In Trust and Michel Rolland and Michel Dion are listed as authorized representatives for NBI Canada.

12. In transferring or allowing the transfer of funds from the pension fund to NBI In Trust, NBI Canada and/or CCCC bank accounts, the Pension Trust Fund as the named administrator has permitted the use or diversion of funds for purposes other than the purpose of the Plan in contravention of the trust agreement and subsection 22(1) of the *Act*.
13. In addition, the Pension Trust Fund has contravened subsection 22(4) of the *Act* because it has knowingly permitted its own interest to conflict with its duties and powers in respect of the pension fund in that Michel Rolland is an officer of NBI In Trust and Michel Rolland and Michel Dion are authorized representatives of NBI Canada. Lastly, funds have been transferred from the pension fund to accounts held by CCCC, which contravenes subsection 78(1) of the *Act*. Subsection 78(1) of the *Act* states that no money may be paid out of a pension fund to the employer without the prior consent of the Superintendent.

#### **Investments**

14. Section 62 of the *Act* states that the investments to be made with the assets of the pension fund shall be selected in accordance with the criteria set out in the *Act* and regulations. Section 79 of the Regulation states that assets of a pension plan shall be invested in accordance with



the federal investment regulations. Clause 6(1)(b)(i) of the *Pension Benefits Standards Regulations*, 1985, SOR/87-19 to the *Pension Benefits Standards Act*, 1985, R.S.C. 1985, c. 32 as amended, states that the moneys of the pension fund are to be invested in a name that clearly indicates that the investment is held in trust for the plan or in the name of a financial institution or The Canadian Depository for Securities Limited in accordance with a trust or custodial agreement that clearly indicates that the investment is held for the plan.

15. The moneys of the pension fund are not being invested in trust for the Plan nor are they being held in the name of a financial institution and/or The Canadian Depository for Securities Limited in accordance with a trust or custodial agreement that clearly indicates that the investment is held for the Plan. The named administrator has, therefore, failed to select the investments for the pension fund in accordance with the criteria set out in the *Act* and regulations in contravention of section 62 and subsection 22(1) of the *Act* and section 79 of the Regulation.

#### **Assignments of Locked In Accounts**

16. Section 65 of the *Act* states that every transaction that purports to assign, charge, anticipate or give as security money payable under a pension plan or transferred from a pension fund is void. The Superintendent has information that indicates that the funds transferred to the pension fund in respect of the Plan from locked in retirement accounts or other prescribed retirement arrangements have been assigned, charged, anticipated or given as security in favour of NBI In Trust in return for the

extension of a loan from NBI In Trust to the holder of the prescribed retirement arrangement. Such transactions are unlawful and void pursuant to section 65 of the *Act*. The named administrator has accepted the transfer of funds from locked in retirement accounts or other prescribed retirement arrangements which funds have been assigned, charged, anticipated or given as security in contravention of section 65 of the *Act*.

#### **Annual Filings**

17. Subsection 20(1) of the *Act* states that the administrator "shall file each year an annual information return in respect of the pension plan ... and shall pay the filing fee established by the Minister." Subsection 20(2) of the *Act* states that the administrator "shall file additional reports at the times and containing the information prescribed by the regulations."
18. Subsection 18(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation") states that the administrator shall file the annual information return not later than six months after the end of the fiscal year of the plan in the case of a defined contribution plan. Subsections 76(1) and (2) of the Regulation state that the administrator shall file financial statements for the pension plan or fund as at the plan's fiscal year end and if at the fiscal year end the plan has \$3,000,000 or more in assets, the administrator shall file an auditor's report respecting the financial statements. Subsection 76(4) of the Regulation states that the financial statement and auditor's report shall be filed within six months after each fiscal year end for the plan.
19. The Plan is a defined contribution pension

plan. The fiscal year end for the Plan is December 31. No annual information return, financial statements or auditor's report (if required) have been filed by the Pension Trust Fund to date in contravention of section 20 of the *Act* and subsections 18(1), 76(1), 76(2) and 76(4) of the Regulation.

### Information Requested by the Superintendent

20. Subsection 98(1) of the *Act* states that "[t]he Superintendent may require an employer, an administrator or any other person to supply the Superintendent such information ... for the purpose of ascertaining whether or not [the] *Act* and the regulations are being complied with". The Superintendent has requested certain information regarding the Plan pursuant to section 98 of the *Act*. Subsection 98(2) of the *Act* stipulates that the person to whom a request is made under subsection 98(1) of the *Act* must comply with the request within the time specified by the Superintendent. To date, the named administrator or other parties have not adequately responded to the Superintendent's request. The named administrator, in failing to respond adequately to a request for information pursuant to section 98 of the *Act*, has failed to administer the plan in accordance with the *Act*.

### Conclusion

21. Clause 18(1)(b) of the *Act* states that the Superintendent may "revoke the registration of a pension plan that does not comply with [the] *Act* and the regulations". The Superintendent proposes to revoke the registration of the Plan pursuant to clause 18(1)(b) of the *Act* for the following reasons:

- a. The named administrator of the Plan, the Pension Trust Fund, is not eligible to act as the administrator of the Plan under section 8 of the *Act*; and
  - b. The documents that create and support the Plan do not set out the information specified in paragraph 3 above in contravention of section 10 of the *Act*.
22. Clause 18(1)(c) of the *Act* states that the Superintendent may "revoke the registration of a pension plan that is not being administered in accordance with [the] *Act* and the regulations". The Superintendent proposes to revoke the registration of the Plan pursuant to clause 18(1)(c) of the *Act* for the following reasons:
- a. The named administrator has provided a false attestation that the plan complies with the *Act* and regulations in contravention of clause 9(2)(e.1) of the *Act*;
  - b. The named administrator is accepting transfers of funds from persons who are not eligible to participate in the Plan in contravention of the Plan and, hence, in contravention of clause 19(3)(a) of the *Act*;
  - c. The named administrator is accepting transfers from locked in retirement accounts or other prescribed retirement arrangements which transfers constitute a commutation or surrender of a prescribed retirement arrangement in contravention of section 67 of the *Act*;
  - d. The named administrator has not exercised the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person because it transferred or permitted the transfer of funds from the pension fund to NBI In Trust, NBI



Canada and/or CCCC in contravention of subsection 22(1) of the *Act*;

e. The named administrator has knowingly permitted its own interest to conflict with its duties and powers in respect of the pension fund by transferring or permitting the transfer of funds from the pension fund to NBI In Trust, NBI Canada and/or CCCC in contravention of subsection 22(4) of the *Act*;

f. The named administrator has failed to select the investments for the pension fund in accordance with the *Act* and regulations in contravention of section 62 and subsection 22(1) of the *Act* and section 79 of the Regulation;

g. The named administrator has accepted the transfer of funds from locked in retirement accounts or other prescribed retirement arrangements which funds have been assigned, charged, anticipated or given as security in contravention of section 65 of the *Act*;

h. The named administrator has failed to file the annual information return, financial statements and auditor's report (if required) within the prescribed time limits in contravention of section 20 of the *Act* and subsections 18(1), 76(1), 76(2) and 76(4) of the Regulation; and

i. The named administrator failed to adequately respond to the request by the Superintendent to provide information in contravention of section 98 of the *Act*.

23. Such further and other reasons as may come to my attention.

DATED at North York, Ontario, this 28th day of September, 2001.

Tom Golfetto, Director (Acting)  
Pension Plans Branch,  
by delegated authority from  
K. David Gordon,  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

## Consents to Payments of Surplus out of Wound Up Pension Plans

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the *Act* consenting to a payment out of **The Retirement Benefit Pension Plan for Members of Local 1804-I.A.M. of the Weatherhead Plant of Dana Canada Inc., Registration Number 0311845;**

**TO:** **Dana Canada Inc.**  
P.O. Box 3029  
St. Catharines, Ontario  
L2R 7K9

**Attention:** William A. Jocsak  
Director, Benefits Administration  
**Applicant and Employer**

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of The Retirement Benefit Pension Plan for Members of Local 1804-I.A.M. of the Weatherhead Plant of Dana Canada Inc., Registration No. 0311845, of \$13,193.78 to Dana Canada Inc.

DATED at North York, Ontario, this 3rd day of August, 2001.

Tom Golfetto, Director (Acting)  
Pension Plans Branch,  
by delegated authority from  
K. David Gordon,  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services  
cc: Waheda Alli, The Standard Life  
Assurance Company

### Consent

**ON** or about July 4, 2001, the Superintendent of Financial Services caused to be served on Dana Canada Inc. a Notice of Proposal dated June 28, 2001, to consent, pursuant to subsection 78(4) of the *Act*, to payment out of The Retirement Benefit Pension Plan for Members of Local 1804-I.A.M. of the Weatherhead Plant of Dana Canada Inc., Registration No. 0311845, to Dana Canada Inc., in the amount of \$13,193.78.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "*Act*");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of C.J. Duguid Flooring (Ontario) Limited, Registration Number 0481457**;

**TO:** **C.J. Duguid Flooring (Ontario) Limited**  
317 Don Park Road  
Markham, Ontario  
L3R 1C2

**Attention:** John Duguid  
President  
**Applicant and Employer**

### Consent

**ON** or about May 23, 2001, the Superintendent of Financial Services caused to be served on C.J. Duguid Flooring (Ontario) Limited a Notice of Proposal dated May 22, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Pension Plan for Employees of C.J. Duguid Flooring (Ontario) Limited, Registration No. 0481457 (the "*Plan*"), to C.J. Duguid Flooring (Ontario) Limited in the amount of \$247,451 as at December 31, 1999, adjusted for investment earnings and losses thereon and expenses to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Pension Plan for Employees of C.J. Duguid Flooring (Ontario) Limited, Registration No. 0481457, of \$247,451 as at December 31, 1999, adjusted for investment earnings and losses thereon and expenses to the date of payment to C.J. Duguid Flooring (Ontario) Limited.

DATED at North York, Ontario, this 13th day of August, 2001.

Tom Golfetto, Director (Acting)  
Pension Plans Branch,  
by delegated authority from  
K. David Gordon,  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

cc: Donna Wolfe, Cowan Wright Limited  
Timothy B. Lawrence, Cowan Wright  
Limited



**IN THE MATTER OF** The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Locally Engaged Employees of the New Zealand Government in Canada, Registration Number 338970;**

**TO:** **Her Majesty The Queen in Right of New Zealand**  
New Zealand High Commission  
Suite 727, 99 Bank Street  
Ottawa, Ontario  
K1P 6G3

**Attention:** Wade Armstrong  
High Commissioner  
**Applicant and Employer**

### Consent

**ON** or about July 6, 2001, the Superintendent of Financial Services caused to be served on Her Majesty The Queen in Right of New Zealand a Notice of Proposal dated June 26, 2001, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Locally Engaged Employees of the New Zealand Government in Canada, Registration No. 338970, to Her Majesty the Queen in Right of New Zealand in the amount of \$544,701, as at May 1, 2000, adjusted for investment earnings thereon to the date of payment and adjusted for legal, actuarial and administrative expenses.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Pension Plan for the Locally Engaged Employees of the New Zealand Government in Canada, Registration No. 338970, of \$544,701 as at May 1, 2000, adjusted for investment earnings thereon to the date of payment and adjusted for legal, actuarial and administrative expenses to Her Majesty the Queen in Right of New Zealand.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that all benefits, benefit enhancements (including benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5) and any other payment to which the members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at North York, Ontario, this 24th day of August, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

cc: Dany Mathieu, Hicks Morley Hamilton  
Stewart Sorie LLP  
Rosemary Patterson, New Zealand High  
Commission



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of **The Pension Plan for Non-Unionized Salaried Employees of Libbey Canada Inc., Registration Number 1001130;**

**TO: Mr. Frederick J. Thompson,**  
**F.S.A., F.C.I.A.**

Thompson Actuarial Limited  
87 Wolverleigh Blvd.  
Toronto, Ontario  
M4J 1R8

**Actuary for the Applicant  
and Employer**

### Consent

**ON** or about July 31, 2001, the Superintendent of Financial Services caused to be served on Libbey Canada Inc. a Notice of Proposal dated July 31, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of The Pension Plan for Non-Unionized Salaried Employees of Libbey Canada Inc., Registration No. 1001130 (the "Plan"), to Libbey Canada Inc. in the amount of approximately \$358,429 as at December 31, 2000, plus investment earnings thereon to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of The Pension Plan for Non-Unionized Salaried Employees of Libbey Canada Inc., Registration No. 1001130, of approximately \$358,429 as at December 31, 2000, plus investment earnings thereon to the date of payment to Libbey Canada Inc.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that the administrator of the pension plan has paid out all benefits and other payments, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the partial termination of the pension plan effective May 31, 1999.

DATED at North York, Ontario, this 27th day of August, 2001.

K. David Gordon  
Deputy Superintendent  
Pension Division

Financial Services Commission of Ontario  
cc: Nazi Irani, Libbey Canada Inc.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Swift Adhesives Salaried Employees Pension Plan, Registration No. 956219**;

**TO:** **Reichhold Limited**

c/o Reichhold Inc.  
P.O. Box 13582  
Research Triangle Park  
Raleigh Durham,  
North Carolina  
27709-3582  
U.S.A.

**Attention:** Trent Rhyne  
Compensation and Benefits  
Director  
**Applicant**

### **Consent**

**ON** or about August 3, 2001, the Superintendent of Financial Services caused to be served on Reichhold Limited a Notice of Proposal dated August 3, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Swift Adhesives Salaried Employees Pension Plan, Registration No. 956219 (the "Plan"), to Reichhold Limited, as follows:

- (a) An amount shall be paid or allocated to the Applicant equal to:
  - (i) \$541,305, the value of the liabilities as determined by the Plan Actuary in consultation with the actuary for the Plan members for early retirement benefits as negotiated and grow-in benefits required to be

provided under the *Pension Benefits Act*, R.S.O. 1990, for Ontario members, which pursuant to the Surplus Sharing Settlement Agreement shall be provided to all eligible employees of the Applicant accruing benefits under the Plan at any time in the period from November 13, 1998, through the Plan wind up date (April 30, 2000), regardless of jurisdiction of residence or employment and grow-in benefits as negotiated together with interest thereon from the date as at which each value is determined to the date of payment or allocation to the Applicant at the rates of interest used to determine the liability as follows:

<b>Interest Rate</b>	<b>Value of Liabilities</b>
6.5% per annum	\$355,344
5.0% per annum	\$105,809
5.75% per annum	\$ 80,152
Total	\$541,305
plus	

- (ii) \$2.1 million as at April 30, 2000, together with interest thereon at the rate of 6.5%, being the rate of return used to determine the Plan's liability for transfer values as determined by the Actuary from April 30, 2000, to the date of payment; plus
- (iii) 50% of the surplus remaining after making provision for the payments contemplated in (i) and (ii) above together with net earnings or losses thereon (estimated to be, as at April 30, 2000, \$3,278,154).

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.



**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Swift Adhesives Salaried Employees Pension Plan, Registration No. 956219, to Reichhold Limited of the amounts under (a)(i), (ii) and (iii) above.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that the entitlements of all members and former members have been settled.

DATED at North York, Ontario, this 26th day of September, 2001.

Tom Golfetto, Director (Acting)  
Pension Plans Branch,  
by delegated authority from  
K. David Gordon,  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

cc: Kim Ozubko  
Blake, Cassels & Graydon LLP



## **Declaration that the Pensions Benefits Guarantee Fund Applies to Pension Plans – Subsection 83(1) of the PBA**

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Van Dresser Limited Non-Contributory Pension Plan, Registration Number 960005 (formerly C-100753) (the “Pension Plan”)**;

**TO:** **Ernst & Young Inc.**  
Ernst & Young Tower  
Toronto-Dominion Centre  
P.O. Box 251, 222 Bay Street  
Toronto, Ontario  
M5K 1J7

**Attention:** Mr. Brian Denega  
Senior Vice-President  
**Administrator of the Van Dresser Limited Pension Plan**

**AND TO:** **Van Dresser Limited**  
139 Northfeld Drive  
Waterloo, Ontario  
N2L 5A6

**Attention:** Mr. Jeff Bradshaw  
Controller  
**Employer**

**AND TO:** **KPMG Inc.**  
(formerly Peat Marwick  
Thorne Inc.)  
Suite 3300, Commerce Court West  
P.O. Box 31, Station  
Commerce Court  
Toronto, Ontario  
M5L 1B2

**Attention:** Mr. Michael Creber  
Senior Vice-President  
**Trustee in Bankruptcy and Receiver and Manager of Van Dresser Limited**

**AND TO:** **CAW-Canada**  
205 Placer Court  
North York, Ontario  
M2H 3H9

**Attention:** Mr. Lewis Gottheil  
**Counsel**

### **Declaration**

#### **WHEREAS:**

1. Van Dresser Limited Non-Contributory Pension Plan, Registration No. 960005 (C-100753) (the “Pension Plan”), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the “Act”), and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the “PBGF”) by the Act or the regulations made there-under; and
3. The Pension Plan was wound up effective July 17, 1992; and



4. The Superintendent of Pensions appointed Ernst & Young Inc. as the administrator (the "Administrator") of the Pension Plan on September 9, 1992.
5. On June 4, 2001, the former Superintendent of the Financial Services Commission issued a Notice of Proposal dated May 31, 2001, to make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the *Act*, that the PBGF applies to the pension plan for the following reasons:

1. The Supplement to the Wind Up Report filed by the Administrator indicates an estimated funding deficiency of \$372,871 as at May 31, 2001.
2. KPMG Inc. was appointed Receiver and Manager of Van Dresser Limited on February 21, 1992, and Trustee in Bankruptcy on May 5, 1992.
3. The Trustee in Bankruptcy of Van Dresser Limited has advised the Administrator that there are no assets available from the Estate of Van Dresser Limited for the Pension Plan.

DATED at North York, Ontario, this 31st day of July, 2001.

K. David Gordon,  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28, respecting the **Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited, Registration Number 0315176** (the "Pension Plan");

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto, Ontario  
M5H 1B6

**Attention:** Lawrence A. Contant  
**Administrator of the Pension Plan**

**AND TO:** **Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited**  
75 Milner Avenue  
Scarborough, Ontario  
M1S 3R7

**Attention:** T. A. Ronaldson  
**Employer**

## **Declaration**

### **WHEREAS:**

1. The Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and

Norman Wade Management Limited (the "Pension Plan"), Registration No. 0315176, is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "Act"); and

2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective May 1, 1998; and
4. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Pension Plan on June 15, 1998; and
5. On July 9, 2001, the Superintendent of Financial Services issued a Notice of Proposal, dated July 6, 2001, to make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89(6) of the *Act*, has been received.

**NOW THEREFORE TAKE NOTICE** I declare that, pursuant to section 83 of the *Act*, the guarantee fund applies to the pension plan for the following reasons:

1. The Wind Up Report filed by the Administrator indicates an estimated funding deficiency of \$199,252 as at April 1, 2000, with respect to Ontario members, before deduction of wind up costs.



2. On May 1, 1998, Norman Wade Company Limited was assigned into bankruptcy, and the affiliates it operated, namely Techniprint Services Limited and Norman Wade Management Limited, ceased operations on the same day.
3. The trustee in bankruptcy of Norman Wade Company Limited has advised the Administrator that there are no funds available from the estate of the Company to pay to the Pension Plan.

DATED at North York, Ontario, this 28th day of August, 2001.

Tom Golfetto, Director (Acting)  
Pension Plans Branch,  
by delegated authority from  
K. David Gordon,  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration Number 0937458** (the "Pension Plan");

**TO:** **Morneau Sobeco**  
1500 Don Mills Road  
Suite 500  
Toronto, Ontario  
M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Agent for Deloitte & Touche Inc. in its capacity as Administrator of the Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees**

**AND TO:** **Royal Oak Mines Inc.**  
P.O. Box 2010  
Timmins, Ontario  
P4N 7X7

**Attention:** Mrs. Rachel A. Pineault  
Corporate Manager, Pensions and Benefits  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
145 King Street West  
Toronto, Ontario  
M5H 1V8

**Attention:** Ms. Louisa Blunda  
**Interim Receiver and Manager of Royal Oak Mines Inc.**

## Declaration

### **WHEREAS:**

1. Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration No. 0937458 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "PBGF") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective February 14, 2000; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on October 13, 1999.
5. On June 25, 2001, I issued a Notice of Proposal dated June 20, 2001 to make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the *Act*, that the PBGF applies to the pension plan for the following reasons:

1. The actuarial report prepared as of March 31, 1999, indicated that the Pension Plan



was underfunded on a solvency basis as at that date in that the total value of its assets was not sufficient to pay the total actuarial value of benefits to that date. Furthermore, the March 31, 2001 cost certificate filed by the Administrator confirms that there have not been any events that would lead to the elimination of the deficit reported by the March 31, 1999 actuarial valuation.

2. PricewaterhouseCoopers Inc. was appointed Interim Receiver and Manager of Royal Oak Mines Inc. on April 16, 1999.
3. The Interim Receiver and Manager of Royal Oak Mines Inc. has advised the Administrator that there are no assets available from the Estate of Royal Oak Mines Inc.

DATED at North York, Ontario, this 28th day of August, 2001.

Tom Golfetto, Director (Acting)  
Pension Plans Branch,  
by delegated authority from  
K. David Gordon,  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration Number 0937466** (the "Pension Plan");

**TO:** **Morneau Sobeco**  
1500 Don Mills Road  
Suite 500  
Toronto, Ontario  
M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Agent for Deloitte & Touche Inc. in its capacity as Administrator of the Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees**

**AND TO:** **Royal Oak Mines Inc.**  
P.O. Box 2010  
Timmins, Ontario  
P4N 7X7

**Attention:** Mrs. Rachel A. Pineault  
Corporate Manager, Pensions and Benefits  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
145 King Street West  
Toronto, Ontario  
M5H 1V8

**Attention:** Ms. Louisa Blunda  
**Interim Receiver and Manager of Royal Oak Mines Inc.**

**AND TO:** **United Steelworkers of America Local 4440**  
57 Mountjoy Street South  
Timmins, Ontario  
P4N 1S6

**Attention:** Mr. Rick Chopp  
**President**

## **Declaration**

### **WHEREAS:**

1. Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration No. 0937466 (the "Pension Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "PBGF") by the *Act* or the regulations made there-under; and
3. The Pension Plan was wound up effective December 31, 1999; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on October 13, 1999.
5. On June 25, 2001, I issued a Notice of Proposal dated June 20, 2001 to make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to sub-



section 89 (6) of the *Act*, has been received.

**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the *Act*, that the PBGF applies to the Pension Plan for the following reasons:

1. The actuarial report prepared as of March 31, 1999, indicated that the Pension Plan was underfunded on a solvency basis as at that date in that the total value of its assets was not sufficient to pay the total actuarial value of benefits to that date. Furthermore, the February 28, 2001 cost certificate filed by the Administrator confirms that there have not been any events that would lead to the elimination of the deficit reported by the March 31, 1999 actuarial valuation.
2. PricewaterhouseCoopers Inc. was appointed Interim Receiver and Manager of Royal Oak Mines Inc. on April 16, 1999.
3. The Interim Receiver and Manager of Royal Oak Mines Inc. has advised the Administrator that there are no assets available from the Estate of Royal Oak Mines Inc.

DATED at North York, Ontario, this 28th day of August, 2001.

Tom Golfetto, Director (Acting)  
Pension Plans Branch,  
by delegated authority from  
K. David Gordon,  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Hudson Bay Diecasting Limited Salaried Employees Retirement Income Plan, Registration Number 0380170**;

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto, Ontario  
M5H 1B6

**Attention:** Mr. David R. Kearney  
**Administrator**

**AND TO:** **Hudson Bay Diecasting Limited**  
230 Orenda Road  
Brampton, Ontario  
L6T 1E9

**Attention:** Mr. Dwight W. Rollins  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
Suite 1100  
One Robert Speck Parkway  
Mississauga, Ontario  
L4Z 3M3

**Attention:** Mr. Andrew Wilczynski  
**Trustee in Bankruptcy for Hudson Bay Diecasting Limited**

## **Declaration**

### **WHEREAS:**

1. The Hudson Bay Diecasting Limited Salaried Employees Retirement Income Plan, Registration No. 380170 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on January 17, 1996; and
4. The Plan was wound up effective September 7, 1995; and
5. On July 30, 2001, the Deputy Superintendent, Pension Division, issued a Notice of Proposal, dated July 23, 2001, to make a Declaration that the Guarantee Fund applies to the Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to sub-section 89 (6) of the *Act*, has been received.

**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 67.7% with an estimated claim against the Guarantee Fund at wind up of \$118,029,081
2. The employer, Hudson Bay Diecasting Limited, was assigned into bankruptcy on September 1, 1995



3. The trustee in bankruptcy for Hudson Bay Diecasting Limited has advised the Administrator that there are no funds available from the estate of Hudson Bay Diecasting Limited to make payment to the Plan.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

DATED at North York, Ontario, this 24th day of September, 2001.

Tom Golfetto, Director (Acting)  
Pension Plans Branch,  
by delegated authority from  
K. David Gordon,  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Hudson Bay Diecasting Limited Hourly Employees Retirement Income Plan, Registration Number 362178;**

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto, Ontario  
M5H 1B6

**Attention:** Mr. David R. Kearney  
**Administrator**

**AND TO:** **Hudson Bay Diecasting Limited**  
230 Orenda Road  
Brampton, Ontario  
L6T 1E9

**Attention:** Mr. Dwight W. Rollins  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
Suite 1100  
One Robert Speck Parkway  
Mississauga, Ontario  
L4Z 3M3

**Attention:** Mr. Andrew Wilczynski  
**Trustee in Bankruptcy for  
Hudson Bay Diecasting  
Limited**

**AND TO:** **National Automobile,  
Aerospace, Transportation  
and General Workers Union  
of Canada (CAW - Canada),  
Local 1285**  
205 Placer Court  
Toronto, Ontario  
M2H 3H9

**Attention:** Jeff Wareham, National  
Representative, Pension and  
Benefits Department.  
**Union**

## **Declaration**

### **WHEREAS:**

1. The Hudson Bay Diecasting Limited Hourly Employees Retirement Income Plan, Registration No. 362178 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on January 17, 1996.
4. The Plan was wound up effective September 7, 1995; and
5. On July 30, 2001, the Deputy Superintendent, Pension Division, issued a Notice of Proposal, dated July 23, 2001, to make a Declaration that the Guarantee Fund applies to the Plan; and

6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan at wind up is estimated to be 78.9%, with an estimated claim against the Guarantee Fund at wind up of \$472,444.00.
2. The employer, Hudson Bay Diecasting Limited, was assigned into bankruptcy on September 7, 1995.
3. The trustee in bankruptcy for Hudson Bay Diecasting Limited has advised the Administrator that there are no funds available from the estate of Hudson Bay Diecasting Limited to make payment to the Plan.
4. The Administrator is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

DATED at North York, Ontario, this 24th day of September, 2001.

Tom Golfetto, Director (Acting)

Pension Plans Branch,

by delegated authority from

K. David Gordon,

Deputy Superintendent, Pension Division

by delegated authority from

Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration Number 1021005** (the "Pension Plan");

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto, Ontario  
M5H 1B6

**Attention:** Lawrence Contant  
**Administrator of the Pension Plan for Hourly Employees of Alumiprime Windows Limited**

**AND TO:** **Alumiprime Windows Limited**  
40 St. Regis Crescent North  
Downsview, Ontario  
M3J 1Z2

**Attention:** Martin Cash  
**Employer**

**AND TO:** **Shiner & Associates Inc.**  
30 Wertheim Court  
Suite 22  
Richmond Hill, Ontario  
L4B 1B9

**Attention:** Debbie Geller  
**Trustee in Bankruptcy, Alumiprime Windows Limited**

**AND TO:** **United Steelworkers of America**  
25 Cecil Street  
Toronto, Ontario  
M5T 1N1

**Attention:** Mohamed Baksh  
**Union**

### **Declaration**

#### **WHEREAS:**

1. The Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration No. 1021005 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "PBGF") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective November 24, 1998; and
4. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Pension Plan on July 9, 1999; and
5. On July 31, 2001, I issued a Notice of Proposal dated July 26, 2001 to make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89(6) of the *Act*, has been received.



**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the *Act*, that the PBGF applies to the Pension Plan for the following reasons:

1. The Extracts of the Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of \$177,100.00 as at November 24, 1998.
2. On November 24, 1998, Alumiprime Windows Limited was adjudged bankrupt.
3. The trustee in bankruptcy of Alumiprime Windows Limited has advised the Administrator that there are no assets available from the bankrupt estate of Alumiprime Windows Limited for the Pension Plan.

DATED at North York, Ontario, this 25th day of September, 2001.

Tom Golfetto, Director (Acting)  
 Pension Plans Branch,  
 by delegated authority from  
 K. David Gordon,  
 Deputy Superintendent, Pension Division  
 by delegated authority from  
 Superintendent of Financial Services



## **Allocations of Money from the Pension Benefits Guarantee Fund – Subsection 34(7) of the Regulation 909**

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Van Dresser Limited Non-Contributory Pension Plan, Registration Number 960005 (formerly C-100753)** (the "Pension Plan");

**TO:** **Ernst and Young Inc.**  
Ernst and Young Tower  
Toronto-Dominion Centre  
P.O. Box 251, 222 Bay Street  
Toronto, Ontario  
M5K 1J7

**Attention:** Mr. Brian Denega  
Senior Vice-President  
**Administrator of the Van  
Dresser Non-Contributory  
Pension Plan**

PBGF and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909 under the *Act* (the "Regulation"), an amount not to exceed \$372,871, as at May 31, 2001, to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the PBGF but not required to provide such benefits shall be returned to the PBGF.

DATED at North York, Ontario, this 26th day of July, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
by delegated authority from  
Superintendent of Financial Services

### **Allocation**

**WHEREAS** on July, 2001, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"), that the Pension Benefits Guarantee Fund (the "PBGF") applies to the Van Dresser Limited Non-Contributory Pension Plan, Registration No. 960005 (formerly C-100753) (the "Pension Plan");

**NOW THEREFORE** I shall allocate from the







## TRIBUNAL ACTIVITIES

### Appointments of Financial Services Tribunal Board Members

Name and O.C.	Effective Appointment Date	Expiry Date
<b>Milczynski, Martha (Chair)</b> O.C. 1622/2001 O.C. 1665/99 O.C. 1808/98	June 20, 2001 October 6, 1999 July 8, 1998	June 19, 2004 July 7, 2001 October 6, 1999
<b>McNairn, Colin (Vice-Chair)</b> O.C. 1623/2001 O.C. 1809/98	June 20, 2001 July 8, 1998	June 19, 2004** July 7, 2001
<b>Bush, Kathryn M. (Vice-Chair)</b> O.C. 1052/2000 O.C. 1666/99 O.C. 1191/99 O.C. 904/97	May 31, 2000 October 6, 1999 June 17, 1999 May 14, 1997	May 30, 2002** June 16, 2000 October 6, 1999 June 16, 1999
<b>Corbett, Anne</b> O.C. 1438/2001	June 19, 2004**	June 20, 2001
<b>Erllichman, Louis</b> O.C. 2527/98 O.C. 1592/98	December 9, 1998 June 17, 1998	December 8, 2001 December 16, 1998
<b>Forbes, William M.</b> O.C. 1624/2001 O.C. 520/98	June 20, 2001 March 25, 1998	June 19, 2001** March 24, 2001
<b>Gavin, Heather</b> O.C. 11/99	January 13, 1999	January 12, 2002
<b>Greville, M. Elizabeth</b> O.C. 222/99 O.C. 2405/95	January 27, 1999 February 8, 1996	January 26, 2002 February 7, 1999
<b>Martin, Joseph P.</b> O.C. 1626/2001 O.C. 1810/98	June 20, 2001 July 8, 1998	June 19, 2004** July 7, 2001
<b>Moore, C.S. (Kit)</b> O.C. 1625/2001 O.C. 1591/98	June 20, 2001 July 1, 1998	June 19, 2004** June 30, 2001
<b>Short, David A.</b> O.C. 2118/2001	October 24, 2001	October 23, 2004**
<b>Stephenson, Joyce Anne</b> O.C. 2409/98 O.C. 1930/95	November 4, 1998 October 28, 1995	November 3, 2001 October 27, 1998
<b>Vincent, J. David</b> O.C. 2119/2001	October 24, 2001	October 23, 2004**
<b>Wires, David E.</b> O.C. 2166/99 O.C. 257/97	February 26, 2000 February 27, 1997	February 25, 2003 February 26, 2000

\*\*Or on the day FSCO/OSC merges, if earlier



## Pension Hearings Before the Financial Services Tribunal

### **Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number 336081, FST File Number P0099-2000;**

On February 24, 2000, Mr. Patrick J. Moore, President of the United Brewers' Warehouse Workers, Local 375W, requested a hearing seeking an Order directing "the Superintendent to order the administrator of the Plan (Brewers Retail Inc.) to cease administering the Plan with an improperly constituted advisory committee and to cause the creation of a properly constituted advisory committee pursuant to the *Act* and formulating documents." The hearing request arose as a result of a letter from the Superintendent dated January 26, 2000, in which the Superintendent stated that there were no grounds under the *Pension Benefit Act* and Plan to order the establishment of an advisory committee. The letter also stated that any issue that Mr. Moore may have with the letter of understanding, which is part of the agreement between Brewers Retail Inc. and United Food and Commercial Worker's Provincial Board (the "UBWW/UFCW"), wherein Brewers Retail Inc. acknowledges that the UBWW/UFCW has a right to appoint a pension committee with membership, roles and responsibilities as set out in the *Pension Benefit Act*, would be a labour issue and not within the Superintendent's jurisdiction.

At a pre-hearing conference held on May 17, 2000, Brewer's Retail Inc. and the UBWW/UFCW were granted full party status. At the pre-hearing conference the parties agreed that before the Financial Services Tribunal considered the matter on its merits, it was necessary for it to determine the

preliminary issue of whether it had jurisdiction to grant the relief sought in Mr. Moore's Request for Hearing. At the pre-hearing conference, the Superintendent raised the issue of whether notice to former members of the Plan ought to be provided as it appeared that former members of the Plan were not represented.

In a telephone conference held on November 16, 2000, the hearing on the notice issue was scheduled for March 7, 2001. The hearing on the jurisdictional issue was scheduled for September 28, 2001.

On March 7, 2001, the Tribunal decided that former members had received adequate notice of the proceeding through the existing parties to the proceeding. The written reasons for Decision dated April 10, 2001, were published in Volume 10, Issue 2 of the Pension Bulletin.

On September 28, 2001, the Tribunal decided that it did not have jurisdiction to grant the relief sought by Mr. Moore. The written reasons for Decision have not yet been issued.

### **Ontario Public Service Pension Plan, Registration Number 208777, FST File Number P0116-2000;**

On August 2, 2000, the Ontario Pension Board filed a request for hearing in respect of the Superintendent's Notice of Proposal dated July 12, 2000, ordering the Ontario Pension Board to pay Mr. Victor Burns his full pension benefits, with interest payable pursuant to subsection 24(11) of Regulation 909 made under the *Pension Benefit Act*, retroactive to the date of Mr. Burns' retirement from the Ontario Provincial Police ("OPP"), within 60 days from the date of the Order, and on an ongoing basis. An Application for Party Status was filed by

Victor Burns on November 9, 2000, and full party status was granted by the Financial Services Tribunal at a pre-hearing conference held on November 23, 2000.

The hearing was held on October 15 and 16, 2001.

**David Horgan – Ontario Public Service Pension Plan, Registration Number 208777, FST File P0120-2000;**

On August 11, 2000, David Horgan requested a hearing regarding the Superintendent's Notice of Proposal dated July 12, 2000, proposing to refuse to make an order under, section 87 of the *Pension Benefit Act*, with respect to Mr. Horgan's claim that he is entitled to receive pension benefits from the Plan.

The Ontario Pension Board filed an Application for Party Status on September 19, 2000, and was granted full party status at the pre-hearing conference held on November 23, 2000. The hearing was held on July 11, 2001.

On August 1, 2001, the Tribunal issued written reasons for Decision affirming the Superintendent's Notice of Proposal and dismissing the application to the Tribunal to make an Order. Reasons for Decision, dated August 1, 2001, are published in this Pension Bulletin on page 149.

**Rupinder Anand and OPSEU Pension Trust;**

On February 6, 2001, Rupinder Anand requested a hearing regarding the Superintendent's Notice of Proposal dated January 4, 2001, proposing to refuse to make an order under section 87 of the *Pension Benefit Act*, with respect to Mr. Anand's claim that he is eligible to receive pension benefits from the Ontario Public Service Pension Plan. The OPSEU Pension Trust ("OPT") filed an application for party status on February 14,

2001. Counsel for Mr. Anand (who is also counsel for Mr. Horgan) requested that the hearing in this matter be joined with the hearing in Horgan, as the issues in both cases were virtually identical. None of the other parties objected to the joinder. An order granting OPT full party status and joining the hearings, in the Horgan and Anand matters, to be heard concurrently, was signed by the Financial Services Tribunal on March 7, 2001.

The hearing was held on July 11, 2001.

On August 1, 2001, the Tribunal issued written reasons for Decision affirming the Superintendent's Notice of Proposal and dismissing the application to the Tribunal to make an Order. Reasons for Decision, dated August 1, 2001, are published in this Pension Bulletin on page 149.

**Imperial Oil Ltd., FST File Number P0130-2000;**

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve a partial wind up report in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each wind up report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind-up period; (b) apply the growth provisions of section 74 of the *Pension Benefit Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefit Act*, among various options including those available as a result of partial wind-up; and (d) provide for the distribution of assets related to the partial wind up group.



A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the Order subject to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, are published in the Pension Bulletin on page 155.

A continuation of the Pre-Hearing Conference is scheduled for December 20, 2001.

**Marshall-Barwick (formerly Marshall Steel Limited), Registration Number 0968081, FST File Number P150-2001;**

On January 16, 2001, Marshall-Barwick Inc. (formerly Marshall Steel Limited) requested a hearing in respect of the Superintendent's Notice of Proposal dated December 12, 2000. The Superintendent is proposing to refuse to approve a Partial Wind Up Report as at August 28, 1992, respecting the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies in relation to employees who ceased to be employed by Marshall Steel Limited as a result of the closure of its plant in Milton, Ontario. The Superintendent's basis for the Notice of Proposal is that the Report does not protect the interests of all those affected by the partial wind-up, specifically, Mr. Jeffrey G. Marshall, an employee who was terminated during the wind-up period. On June 4, 2001,

Jeffrey G. Marshall applied for party status.

A pre-hearing conference was held on August 13, 2001. The hearing is scheduled for November 29 and 30, 2001.

**National Steel Car Limited, Registration Numbers 0215020 and 0215038, FST File Number P154-2001;**

On March 7, 2001, representatives for members of the Pension Plan for Salaried Employees of National Steel Car Limited requested a hearing regarding the Superintendent's consent to the transfer of all of the assets of the Pension Plan for Salaried Employees of National Steel Car Limited to the Pension Plan for Hourly-Paid Employees of National Steel Car Limited. The Salaried Plan is in a surplus position and the Hourly-Paid Plan has an unfunded liability.

Applications for Party Status were filed on behalf of National Steel Car Limited and certain representatives of the United Steel Workers of America, Local 7135, on behalf of the members of the Hourly-Paid Plan. The two applicants for party status were joined as parties by order at the pre-hearing conference held on June 21, 2001. The main issues in this case are whether the Tribunal has the jurisdiction to entertain the applicant's request for a hearing and whether the Superintendent's consent to the transfer of assets should be set aside or varied.

A Settlement Conference was held September 24, 2001. The hearing is scheduled for January 15, 16 and 17, with a reserve date of the 21, 2002.

**Independent Order of Foresters Fieldworkers, Registration Numbers 0354399, FST File Number P155-2001;**

On August 12, 2001, The Independent Order of Foresters ("IOF") requested a hearing with respect to the Superintendent's Notice of

Proposal dated March 19, 2001, to refuse to consent to an application for the payment of the surplus of the IOF Fieldworkers Pension Plan to the employer. The Superintendent proposed to refuse consent on the basis that she was not satisfied that the Plan had a surplus and that the Plan provides for the payment of any surplus to the employer on the wind up of the Plan.

A pre-hearing conference was held on July 4, 2001, at which Mr. Irvin Grainger was joined as a party to the proceeding. The pre-hearing conference continued on July 27, 2001, at which time it was agreed that a settlement conference would be held on November 13, 2001. A motion by IOF for a determination of the appropriate manner and form of giving notice of the hearing in this matter is scheduled to be heard on December 7, 2001, by a panel of the Tribunal, to be followed by a further continuation of the pre-hearing conference.

**Cooper Industries (Canada) Inc.,  
Registration Number 0240622, FST  
File Number P156-2001;**

On April 17, 2001, Cooper Industries (Canada) Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 8, 2001, to Refuse to Approve a Partial Wind-Up Report, prepared in November 1999 in relation to the partial wind-up of the Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration No. 240622, as at March 30, 1992, in relation to employees at the Port Hope location of Cooper Industries (Canada) Inc. and to make an Order requiring Cooper Industries (Canada) Inc. to refrain from using and to preserve for distribution that portion of the surplus of the Plan attributable to the Port Hope location. The basis for the Notice of Proposal was that the

Partial Wind-Up Report proposed that the surplus assets of the Plan attributable to the Port Hope location be retained for continuing application toward future current service contributions for the Plan's continuing membership and, therefore, failed to provide for distribution of the Port Hope surplus assets.

On May 14, 2001, Messrs. Ray Mills and Larry Battersby applied for Party Status on behalf of Plan members and former Plan members employed at the Port Hope plant and beneficiaries of same.

A pre-hearing conference was held on September 5, 2001, at which Messrs. Mills and Battersby were joined as parties. The pre-hearing conference is scheduled to continue on March 29, 2002.

**Pension Plan for the Employees of  
Dymet Limited, Registration  
Number 0242735, FST File P0157-2001;**

On April 18, 2001, Dymet Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to make an order that the Pension Plan for the Employees of Dymet Limited, Registration No. 0242735, be wound up in full effective August 23, 1996, and to refuse to approve the actuarial report prepared in April 1997 in relation to the partial wind up of the Plan as at August 23, 1996.

The basis for the Notice of Proposal was that as of August 23, 1996, there were no remaining active members in the Plan and Dymet was no longer required to make contributions. The basis for refusing to approve the actuarial report is that the report does not meet the requirements of the *Pension Benefit Act* and the Regulations and does not protect the interests of the members or former members of the Plan.



On May 22, 2001, Mr. Mobeen Khaja applied for Party Status. Mr. Khaja was part of a group of employees who were subject to the partial wind up of the Plan, and would be affected by a full wind up of the Plan.

A pre-hearing conference was held on July 13, 2001. Hearing dates are scheduled for January 24 and 25, 2002.

**Camco Inc. Pension Plan Number 4 and Pension Plan Number 7, FST File Number P160-2001;**

On May 14, 2001, Camco Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 30, 2001, to Refuse to Consent to a Transfer of Assets from the Camco Inc. Pension Plan No. 4, Registration Number 0583302, to the Camco Inc. Pension Plan No. 7, Registration No. 0583336.

The basis for the Notice of Proposal was that the asset transfer does not protect the pension benefits and other benefits of the former members of Plan No. 4 under subsection 81(5) of the *Pension Benefit Act*.

A pre-hearing conference was held on September 24, 2001. A settlement conference is scheduled for December 17, 2001.

**Consumers Packaging Inc., Registration Number 0998682, FST File Number P162-2001;**

On May 17, 2001, Consumers Packaging Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 20, 2001, to Refuse to Approve a Partial Wind-Up Report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial wind up of the Consumers Packaging Inc. Pension Plan II, Registration No. 0998682, as at May 7, 1997, and to Refuse to Register an amendment to such Pension Plan filed by Consumers

Packaging Inc. on May 19, 2000, titled Amendment No. 2.

The basis for the Notice of Proposal was that Consumers Packaging Inc. filed a partial wind up report in 1997. The Superintendent issued two Notices of Proposal in 1999 ordering Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees and refusing to approve the 1997 partial wind up report on the grounds that the replacement call-in employees were not included in the report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial wind up. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal with respect to both Notices of Proposal. The hearing concerning the call-in employees was settled by the parties and Consumers Packaging Inc. accepted as members of the Plan those replacement call-in employees who met certain conditions. The hearing request regarding the "grow-in" benefits was withdrawn. Consumers Packaging Inc. was ordered to file an amended partial wind up report. In addition, in 1997 Consumers Packaging filed an application to register Amendment No. 2 to the Plan which provided enhanced bridge benefits to some members.

On May 19, 2000, Consumers Packaging filed a revised partial wind up report (the "revised report") and a revised application to register Amendment No. 2 (the "revised Amendment"). The Superintendent issued the April 20, 2001 Notice of Proposal based on that the revised Amendment is void pursuant to subsection 19(3)(b) of the *Pension Benefit Act* and that the revised report does not meet the requirements of the *Pension Benefit Act* pursuant to subsection 70(5) because the commuted value of the



pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the *Act* and does not protect the interests of the members and former members of the Plan for the same reason.

The Superior Court of Justice, Commercial List issued an Order, dated May 23, 2001, stating that any suit, action, enforcement process, extra-judicial proceeding, regulatory, administrative or other proceeding against or in respect of Consumers Packaging Inc. already commenced be stayed and suspended until and including June 22, 2001. A further Order was issued on June 18, 2001, extending the stay period until August 15, 2001, and again until October 1, 2001.

**CBS Canada Co., Registration Numbers 348409 and 526632, FST File Number P164-2001;**

On June 8, 2001, CBS Canada Co. requested a hearing regarding the Superintendent's Notices of Proposal dated May 9 and 15, 2001 to Refuse to Approve a Partial Wind-Up Report in respect of the businesses carried on by CBS Canada Co. (formerly Westinghouse) at its Burlington, Ontario; London, Ontario; St. Jean, Quebec; Hamilton, Ontario; and Motors Division plants.

The basis for the Notices of Proposal was that the Partial Wind-up Report failed to provide employer request early retirement benefits and bridge benefits, contemplated by the Plan, to all members of the partial wind-up groups whose age plus years of service equalled at least 55 and because the Report failed to provide for the distribution of any surplus assets relating to particular wind-up groups.

On June 19, 2001, CAW Canada filed an application for party status. A Pre-Hearing

Conference is scheduled for November 5, 2001.

**Crown Cork & Seal Canada Inc., Registration Numbers 474205, 595371 and 338491, FST File Number P0165-2001;**

On June 29, 2001, Crown Cork & Seal Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada Inc. from the Crown Cork & Seal Canada Inc. Pension Plan for Salaried Employees, Registration No. 0474205 and The Pension Plan for Clerical Employees of Crown Cork & Seal Canada Inc., Registration No. 0595371, into the Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration No. 338491.

The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.

At the request of both parties a Settlement Conference was held on October 30, 2001, prior to the scheduling of the Pre-Hearing Conference. The parties agreed to adjourn this matter *sine die* pending discussions between the parties.

**Samsonite Canada Inc., Registration Number 398578, FST File Number P0166-2001;**

On July 3, 2001, Samsonite Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated June 1, 2001, to refuse to consent to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Service Related Pension Plan, Registration No. 398578.



A Pre-Hearing Conference is scheduled for November 9, 2001.

**James MacKinnon – Labourers' Pension Fund of Central and Eastern Canada, Registration Number 573188, FST File Number P0167-2001;**

On July 13, 2001, James MacKinnon requested a hearing with respect to the Superintendent's Notice of Proposal dated June 20, 2001, to refuse to make an Order regarding Mr. MacKinnon's request that he is entitled to receive a "Thirty and Out" pension benefit from the Labourers' Pension Fund of Central and Eastern Canada. The basis for the refusal is that in refusing to grant Mr. MacKinnon a "Thirty and Out" pension, the Plan administrators have administered the Plan in compliance with requirements of the *Pension Benefits Act*, the Regulations and the filed documents in respect of which the Superintendent of Financial Services has issued a certificate of registration. Subsection 87(2) of the *Act* allows the Superintendent to make an order only if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the Regulations or the pension plan.

On July 31, 2001, the Board of Trustees of the Labourers' Pension Fund of Central and Eastern Canada filed for party status on the basis that they are the Administrators of the Plan and wish to fulfil their fiduciary duties to all beneficiaries to ensure that only valid and proper claims for benefits are paid out from the Fund to protect the interests of all beneficiaries.

A Pre-Hearing Conference is scheduled for November 22, 2001.

**Doris Mair – Philip Services Inc. Pension Plan for Intermetco Senior Management Employees, Registration Number 0687608, FST File Number P0168-2001;**

On August 17, 2001, Doris Mair requested a hearing with respect to the Superintendent's Notice of Proposal dated July 26, 2001, to refuse to make an Order that the Philip Services Inc. Pension Plan for Intermetco Senior Management Employees, Registration No. 0687608 be wound up in part.

On October 19, 2001, Ms. Mair withdrew her request for a hearing.

**Imperial Oil Limited Retirement Plan, Registration Number 347054, FST File Number P0169-2001;**

In this matter, the Superintendent alleges that, effective April 28, 1995, Imperial Oil Limited ("IOL") sold its credit card operations to General Electric Capital Canada Inc. ("GE Capital"), at which time 37 individuals, who had been employed by IOL in that business and were members of the IOL Retirement Plan, became employees of GE Capital and members of its pension plan, while maintaining their accrued benefits in the IOL Retirement Plan.

On August 3, 2001, the Superintendent issued Notices of Proposal to Make Orders requiring:

- that the IOL Retirement Plan be wound up in relation to those members and former members of the Plan who ceased to be employed by GE Capital, between March 2000 and July 2000, as a result of the closure of its Markham, Ontario credit card facility, and
- that such members and former members of the IOL Retirement Plan be given credit for both age and service at the time they ceased



to be employed by GE Capital when determining their benefits, in accordance with section 80(1)(c) of the *Pension Benefits Act*, under the IOL Retirement Plan.

On August 24, 2001, IOL requested a hearing in respect of these Notices of Proposal.

A Pre-Hearing Conference is scheduled for January 9, 2002.

**Stanley Canada Inc., Registration Number 456897, FST File Number P0170-2001;**

On August 27, 2001, Stanley Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated July 26, 2001, to refuse to consent to the application for payment of surplus to the Employer dated April 1999, pursuant to section 78(1) of the *Pension Benefit Act*.

A Pre-Hearing Conference is scheduled for November 28, 2001.

**Canadian Tack & Nail Ltd., Registration Number 581306, FST File Number P0171-2001;**

On September 14, 2001, Canadian Tack & Nail Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated August 14, 2001, to Make an Order under section 87 of the *Pension Benefit Act*, requiring the Employer or Administrator of the Plan to remit within 30 days of receiving the Notice of Proposal, outstanding contributions in the amount of \$67,933 as of December 31, 1999, owed to the Pension Fund, together with interest payable under section 24 of the Regulation 909 under the *Act*.

The basis for the Notice of Proposal is that subsection 87(2) of the *Act* allows the Superintendent to make an order if the Superintendent is of the opinion, upon reason-

able and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the Regulations or the pension plan or if the employer, administrator of a pension plan, or any other person is contravening a requirement of the *Act* or the Regulations.

A Pre-Hearing Conference is being scheduled for February 2002.

**The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;**

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer dated July 17, 2000, pursuant to section 78(1) of the *Pensions Benefit Act* from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.





## Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

There have been no Requests for Hearing received since the last publication of the Pension Bulletin.

### Decisions to be Published

Horgan & Anand	P0120-2000, P0147-2001	August 1, 2001
Imperial Oil	P0130-2000	September 10, 2001

## Financial Services Tribunal Decisions with Reasons

**INDEX NO.:** FST File No. P0120-2000 and P0147-2001

**PLAN:** Ontario Public Service Employees' Union Pension Plan,  
Registration Number 1012046

**DATE OF DECISION:** August 1, 2001

**PUBLISHED:** Bulletin 10/3 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario).*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to refuse to make an Order under section 87 of the Act respecting a request by Mr. David Horgan relating to the **Ontario Public Service Pension Plan, Registration Number 208777;**

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to refuse to make an Order under section 87 of the Act respecting a request by Mr. Rupinder Anand relating to the **Ontario Public Service Employees' Union Pension Plan, Registration Number 1012046;**

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act.

**BETWEEN: DAVID HORGAN and  
RUPINDER ANAND  
Applicants**  
- and -

**SUPERINTENDENT OF  
FINANCIAL SERVICES**  
- and -  
**ONTARIO PENSION BOARD**  
- and -  
**OPSEU PENSION TRUST  
Respondents**

### BEFORE:

Ms. Martha Milczynski,  
Chair of the Tribunal and Member of the Panel  
Mr. Louis Erlichman,  
Member of the Tribunal and Member of  
the Panel  
Mr. William Forbes,  
Member of the Tribunal and Member of  
the Panel

### HEARING DATE:

July 11, 2001  
(North York, Ontario).

### REASONS FOR DECISION

#### Nature of Application

The applicants in this matter, Mr. David Horgan and Mr. Rupinder Anand (together the "Applicants") each requested a hearing before the Financial Services Tribunal in respect of the Notice of Proposal issued to each applicant by the Superintendent of Financial Services ("Superintendent"). The Notices of Proposal indicated that, in the case of Mr. Horgan, the Superintendent was refusing to issue an order



under section 87 of the *Pension Benefits Act* (the "Act") directing the Ontario Pension Board ("OPB") to pay a pension benefit to Mr. Horgan under the terms of the Ontario Public Service Pension Plan ("OPS Plan"). In the case of Mr. Anand, the Superintendent was refusing to issue an order under section 87 of the Act directing the OPSEU Pension Trust ("OPT") to pay a pension benefit to Mr. Anand under the terms of the Ontario Public Service Employees' Union Pension Plan ("OPSEU Plan").

The Superintendent's grounds for the refusals stated in each Notice that section 80 of the *Pension Benefits Act* applied to Mr. Horgan and Mr. Anand, and by virtue of subsection 80(3) of the Act, their employment was deemed not to have been terminated. For reasons set out below, the Tribunal affirms the Superintendent's termination and Orders as proposed.

### Facts

The Applicants were employed in the Property Assessment Office of the Ministry of Finance until December 31, 1998. Mr. Horgan was a member of the OPS Plan; Mr. Anand was a member of the OPSEU Plan.

Pursuant to the requirements of the *Ontario Property Assessment Corporation Act* and the terms of the Memorandum of Understanding between the Minister of Finance and the Ontario Property Assessment Corporation ("OPAC"), effective 12:01 a.m. on December 31, 1998 ("Memorandum of Understanding"), the property assessment functions of the Ministry of Finance and the Ministry's assets, leasehold and other interests or property associated with the property assessment operations were transferred to OPAC.

As part of this transfer and as contemplated by the Memorandum of Understanding, on or

about December 15, 1998, each of the Applicants received an offer of employment from OPAC to be effective December 31, 1998. Each of the Applicants accepted the offer of continued employment under substantially similar terms and conditions of employment. Pursuant to each of their respective offers of employment, Mr. Horgan and Mr. Anand would cease being employed in the Ontario Public Service and continue with OPAC in their positions with the same job titles, at the same rate of pay - the difference being that for pension purposes, each would commence participation in the Ontario Municipal Employees Retirement System ("OMERS") rather than the OPS Plan or OPSEU Plan where their benefits accrued to the effective date of the transfer would remain. In addition, the Applicants' years of service in the Ontario Public Service would be carried over and included in their service with OPAC.

As of the time of the transfer, Mr. Horgan and Mr. Anand were eligible to retire under the "Factor 80" provisions of the OPS Plan and OPSEU Plan. On December 16, 1998, Mr. Anand signed a Notice of Election advising that he was retiring from his employment effective December 30, 1998. On December 17, 1998, Mr. Horgan signed a Notice of Election advising that he was retiring from his employment effective December 31, 1998. Both Applicants continued to work for the Ministry and, as at December 31, 1998, continued working for OPAC. However, both Applicants sought also to receive payment of their pension benefits from either of the OPS Plan or OPSEU Plan as applicable.

The OPB as administrator of the OPS Plan and OPT as administrator of the OPSEU Plan refused to pay the Applicants any pension ben-

efits and advised, in each case, that although eligible for "Factor 80" benefits, and notwithstanding their Notices of Election, neither Mr. Horgan nor Mr. Anand had "retired". In the circumstances of each case, the OPB and OPT advised that section 80 of the *Pension Benefits Act* applied such that notwithstanding the transfer of the Ministry's property assessment functions to a new employer, Mr. Horgan and Mr. Anand's employment with the Ministry was deemed not to have been terminated pursuant to ss.80(3) of the *Act*.

The Applicants each requested the Superintendent to order the plan administrator to commence payment of pension benefits. In the case of Mr. Horgan, by Notice of Proposal dated July 12, 2000, the Superintendent refused to order that the OPB pay Mr. Horgan pension benefits as he requested. By Notice of Proposal dated January 4, 2001, the Superintendent refused to order OPT to pay Mr. Anand pension benefits as he requested. The Superintendent found no basis in the case of either the OPB or OPT that the administrator failed to comply with the requirements of the *Act* or regulation made thereunder.

At the request of the Applicants and on the consent of the other parties, the Tribunal ordered that the hearings in respect of both matters be joined and heard concurrently.

### ***Pension Benefits Act***

The relevant provisions of the *Act* are as follows:

80. (1) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an

employee of the successor employer and becomes a member of a pension plan provided by the successor employer,

- (a) continues to be entitled to the benefits provided under the employer's pension plan in respect of employment in Ontario or a designated province to the effective date of the sale, assignment or disposition without further accrual;
- (b) is entitled to credit in the pension of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and
- (c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.

80. (3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this *Act*, not to be terminated by reason of the transaction.

### **Issues**

All parties agreed that to determine whether the Applicants were entitled to receive payment of pension benefits in the circumstances of this case, the Tribunal would be required to determine the following issues:

1. Was there a sale, assignment or other disposition of all or part of the business or all or part of the assets of the Ministry, the Applicants' former employer, to OPAC?



2. If the answer to issue (1) is yes, did the Applicants become employees of the successor employer, OPAC, in conjunction with the sale, assignment or disposition of the business?
3. If the answer to issues (1) and (2) are yes, what are the consequences that flow from this transaction under subsections 80(1) and 80(3) of the *Act*?

**Issue 1** Was there a sale, assignment or other disposition of all or part of the business or all or part of the assets of the Ministry, the Applicants' former employer, to OPAC?

There is no doubt, having regard to the provisions of the *Ontario Property Assessment Corporation Act*, the terms of the Memorandum of Understanding and the facts surrounding the transfer of operations, that the nature of the transaction between the Ministry of Finance and OPAC fits squarely within the type of transaction contemplated by section 80(1) of the *Pension Benefits Act*. The Tribunal does not accept counsel for the Applicant's submissions that section 80(1) of the *Act* applies only to transfers affecting "for profit" business operations. The *Act* applies to all pension plans registered in Ontario and makes no such distinction in that regard as to whether or not the plan sponsor is a "for profit" or a "not for profit" entity.

In this case, the entire property assessment operation of the Ministry of Finance was transferred to OPAC and as part of this transfer the assignment or disposition of all of the assets associated with the Ministry of Finance's "business" of property assessment was also included.

**Issue 2** If the answer to issue (1) is yes, did the Applicants become employees of the successor employer, OPAC, in conjunction with the sale, assignment or disposition of the business?

It is clear from the terms of the Memorandum of Understanding and the written offers of employment the Applicants received that each of Mr. Horgan and Mr. Anand became an employee of OPAC as part of or in conjunction with the overall transfer of the property assessment operation from the Ministry of Finance to OPAC. There was no other reason but this transaction or transfer of property assessment functions that caused the Applicants' employment to cease with the Ministry of Finance and commence with OPAC. Consequently, as at 12:01 a.m. on December 31, 1998 each of the Applicants became employed by OPAC who became the "successor" employer of the Applicants for the purposes of subsection 80(1) of the *Act*.

**Issue 3** If the answer to issues (1) and (2) are yes, what are the consequences that flow from this transaction under subsections 80(1) and 80(3) of the *Act*?

In this matter, the Tribunal has found on the first two issues that the transfer of property assessment functions from the Ministry of Finance to OPAC was a transaction described by subsection 80(1) of the *Act*:

- (a) the transfer of property assessment function from the Ministry of Finance to OPAC was (i) an assignment or other disposition of all or part of the Ministry's business; and (ii) was also the assignment or other disposition of all or part of the assets associated with that business;

- (b) the Applicants became employed by OPAC as part of or "in conjunction with" the transaction; and
- (c) OPAC became the "successor employer" for the purposes of the *Act*.

Subsection 80(3) of the *Act* is unambiguous - where a transaction described in subsection 80(1) takes place, the employment of the employee who became employed by the successor employer in conjunction with the transaction, is deemed, for the purposes of the *Act* not to be terminated by reason of the transaction. The Applicants are deemed not to have had their employment with the Ministry of Finance terminated by reason of the transaction.

Consequently, for the purposes of subsection 80(1):

- (a) each of the Applicants remain entitled to benefits accrued under the OPS Plan or OPSEU Plan as the case may be;
- (b) each of the Applicants is entitled to credit in OMERS for the period of membership in the OPS Plan or OPSEU Plan as the case may be, for the purposes of determining eligibility for membership in or entitlement to benefits under OMERS; and
- (c) each of the Applicants is entitled to credit in the OPS Plan or OPSEU Plan, as the case may be, for the period of employment with OPAC for the purposes of determining entitlement to benefits under either of the OPS Plan or OPSEU Plan as the case may be.

Subsections 80(1) and 80(3) provide important protection for eligibility and benefit entitlement related to service for pension plan members affected by transactions like the transfer between the Ministry of Finance and OPAC.

The very purpose of section 80 is to protect employees in a transfer or sale of business situation by deeming pension plan membership to be continuous as between the predecessor and successor employer.

Had the transfer between the Ministry of Finance and OPAC not occurred, the Applicants would not have transferred their employment from the Ministry to OPAC and they would not have had any entitlement to trigger a retirement under a Factor 80 pension without actually terminating their employment. Subsection 80(3) deems the Applicants' employment to continue for the purposes of the *Act* as between the Minister of Finance and OPAC without a termination having been caused by the transaction. The Applicants are thus in the same position as they would have been in had the transfer not occurred and their employment simply continued with the Ministry of Finance. Under those circumstances, the Applicants cannot retire and commence receiving payment of a pension benefit without terminating employment with or retiring from OPAC.

Similarly, by virtue of subsection 80(3) of the *Act* an employee affected by the transfer between the Ministry of Finance and OPAC could not exercise the termination/portability provisions of section 42 of the *Act* without terminating employment with OPAC.

As noted above, the very purpose of section 80 is to protect employees in a sale, assignment or transfer of business situation by deeming pension plan membership and credits to be continuous for eligibility and entitlement purposes as between predecessor and successor employers. Without the deeming provision of subsection 80(3) of the *Act*, transferred employees would be treated as terminated employees for pension purposes and lose the valuable growth in rights



and entitlements associated with continuous plan membership.

### **ORDER**

Accordingly, for the reasons noted above, the Superintendent's Notice of Proposal dated July 12, 2000, and Notice of Proposal dated January 4, 2001, whereby the Superintendent refused to issue an order directing the OPB and the OPT to pay the Applicants pension benefits are affirmed and the application to the Tribunal to make such order is dismissed.

DATED at North York, Ontario, this 1st day of August, 2001.

Ms. Martha Milczynski  
Chair of the Panel

Mr. Louis Erlichman  
Member of the Panel

Mr. William Forbes  
Member of the Panel



INDEX NO.: FST File No. P0130-2000

PLAN: Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 (the "IOL Plan"), and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 344002 (the "MFI Plan")

DATE OF DECISION: September 10, 2001

PUBLISHED: Bulletin 10/3 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario).*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** Partial Wind Up Reports submitted by Imperial Oil Limited to the Superintendent of Financial Services respecting the **Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 (the "IOL Plan"), and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 344002 (the "MFI Plan")**;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the *Act*;

**BETWEEN: IMPERIAL OIL LIMITED**

**Applicant**

- and -

**SUPERINTENDENT OF  
FINANCIAL SERVICES  
Respondent**

#### **BEFORE:**

Mr. Colin H.H. McNairn,  
Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman,  
Member of the Tribunal and of the Panel  
Mr. William M. Forbes,  
Member of the Tribunal and of the Panel

#### **APPEARANCES:**

##### **For Imperial Oil Limited:**

Mr. J. Brett Ledger  
Ms. Lindsay P. Hill

##### **For the Superintendent of Financial Services:**

Ms. Deborah McPhail  
Ms. Frederica Rotter

#### **HEARING DATE:**

July 25, 2001  
(North York, Ontario).

#### **REASONS FOR ORDER**

##### **The Background**

This proceeding was initiated by the Applicant by filing a Notice of Request for Hearing with the Tribunal. The Request calls into question a Notice of Proposal by the Superintendent to refuse to approve partial wind-up reports filed by the Applicant in connection with the partial



wind-up of two of its pension plans, namely its IOL Plan and its MFI Plan (the "Plans"). Those wind-ups had been ordered by the Superintendent because of the reorganization of the Applicant and the closure of one of its refineries, all during the period from February 4, 1992 to June 30, 1995 (the "Partial Wind Up Period").

The stated grounds for the Notice of Proposal include the following:

- the reports do not reflect the liabilities associated with all of the members of the Plans whose employment with the Applicant was terminated during the Partial Wind Up Period; and
- the reports fail to provide "grow-in benefits," pursuant to section 74 of the *Act*, in respect of all members of the Plans affected by the partial wind ups who earned benefits while working in Ontario and whose combination of age and years of service with the Applicant is at least 55.

By a Notice of Motion dated June 29, 2001, the Applicant moved for an order of the Tribunal directing the Superintendent to answer certain interrogatories that it had posed and to produce the documents requested in those interrogatories.

### The Issues

At a pre-hearing conference held on June 19, 2001, the parties agreed, in anticipation of the motion, that the issues in this proceeding that are relevant to the motion should be framed, for the purposes of the motion, as follows:

#### Issue 1

- (a) Did any members or former members of the Plan[s] who ceased to be employed by Imperial Oil Limited during the partial wind up period as set out in the

Notice of Proposal cease to be employed as a result of the reorganization or discontinuance of all or part of Imperial Oil Limited's business, if their circumstances fell within one of the following:

- (i) employees whose fixed term contract of employment was complete by its terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);
  - (ii) employees who became disabled and received disability benefits;
  - (iii) employees who allegedly voluntarily resigned;
  - (iv) employees who were transferred to an affiliated company that did not participate in the Plans;
  - (v) employees who retired under the terms of the Plans at normal retirement age;
  - (vi) employees who retired under the disability retirement provisions of the Plans;
  - (vii) employees whose employment was terminated as a result of death; and
  - (viii) employees whose employment was allegedly terminated for cause.
- (b) Do the doctrines of legitimate expectation, abuse or improper exercise of discretion or estoppel apply in the circumstances of this case with respect to the issue of which members and former members must be included in the partial wind up group?

## Issue 2

- (a) Does the *Pension Benefits Act* (Ontario) (the "Act") require that "grow-in benefits" under section 74 be granted to members and former members of the partial wind up group who were employed in a province other than Ontario or Nova Scotia on the date that their employment ceased, in relation to any prior periods of employment with Imperial Oil in Ontario or Nova Scotia? If so, on what basis should such benefits be calculated?
- (b) If the answer to issue (a) is "yes," can periods of employment in provinces other than Ontario or Nova Scotia be excluded when calculating the "grow-in benefits" under section 74 of the *Act* and section 79 of the *Pension Benefits Act* (Nova Scotia) payable to all members and former members whose employment ceased in Ontario or Nova Scotia?
- (c) If the answer to issue (a) is "yes," do the doctrines of legitimate expectation, abuse or improper use of discretion or estoppel apply in the circumstances of this case with respect to the calculation of "grow-in benefits" under section 74 of the *Act* and section 79 of the *Pension Benefits Act* (Nova Scotia) for members who ceased to be employed in the circumstances set out in issue (a)?

There is a third issue that will have to be addressed at the main hearing in this proceeding, but none of the interrogatories to which the Applicant wants answers relates to that issue.

## The Interrogatories

Some of the interrogatories posed by the Applicant have been answered by the

Superintendent to the satisfaction of the Applicant. Other interrogatories do not now require answers in light of certain modifications to the detailed grounds for the Superintendent's Notice of Proposal that were agreed by the Superintendent at the pre-hearing conference.

## The First Set of Interrogatories

The first set of interrogatories to which the Applicant continues to insist on responses can be summarized as follows:

- how many partial plan wind ups were ordered by the Superintendent during the period January, 1988 to October, 2000 pursuant to,
  - paragraph 69(1)(d) of the *Act* (significant number of members of the plan ceasing to be employed as a result of discontinuance or reorganization of business),
  - paragraph 69(1)(e) of the *Act* (discontinuance of a significant portion of the business at a specific location)?
- how many situations were there in respect of such wind ups (ordered under each of the noted paragraphs of the *Act*) where employees were terminated during the partial wind up period for the following reasons;
  - the expiry of a fixed term contract of employment;
  - disability;
  - voluntary resignation;
  - transfer to an affiliated company that did not participate in the Plans;
  - retirement at normal retirement age under the terms of the Plans;
  - early retirement under the terms of the Plans;



- retirement due to disability under the terms of the Plans;
- death; and
- cause for dismissal?
- how many wind-up reports (in respect of wind ups ordered under each of the noted paragraphs of the *Act*) included employees in any such category in the partial wind-up group?
- did the Superintendent refuse to approve any partial wind up reports (in respect of wind ups ordered under each of the noted paragraphs of the *Act*) because the employees in any such category were not included in the relevant partial wind-up group?

The test that we have adopted for ordering answers to interrogatories and the disclosure of documents is that the information sought is arguably relevant to an issue in the proceeding that is not a frivolous issue, that the information is sufficiently particularized to facilitate a response and that the information does not enjoy the benefit of privilege (see *Monsanto Canada Inc. v. Superintendent of Financial Services et al.*, FST File Number P0013, FST Decision Number 3, June 2, 1999).

The Applicant maintained, among other things, that the answers to the interrogatories set out above were arguably relevant to the issue of whether the doctrines of legitimate expectation, abuse or improper exercise of discretion or estoppel apply, in the circumstances of this case, so as to affect the determination of which members or former members of the Plans should be included in the partial wind up groups (Issue 1(b) above). The Superintendent responded by saying that none of those doctrines can have any application in this case and that her office does not make inquiries about the individual circumstances of plan members

who cease to be employed during a partial wind up period. We note that there is nothing in the *Act*, the Regulation under the *Act* or the FSCO Pension Guidelines that would suggest that a partial wind up report is expected to set out the circumstances of members or former members of the pension plan who have ceased employment with the employer during the partial wind up period and are included in or excluded from the partial wind up group. The only guidance offered by any of these sources as to the proper composition of the partial wind up group is very general, namely that the group should include those members "affected by" the partial wind up (see section 1.2.3 of FSCO Pension Guideline W100-101) or should include those members who have ceased employment "as a result of" the event that precipitated the partial wind up (see page 2 of FSCO Pension Guideline W100-301).

What the Applicant hopes to be able to argue, depending on the answers revealed by the interrogatories, is that the Superintendent has not generally taken the position that any of the categories of employees referred to in the interrogatories should be included as part of a partial wind up group and, therefore, cannot now do so (at least without some advance notice of a change of practice), given the doctrines of legitimate expectation, abuse or improper exercise of discretion and estoppel. The Applicant would also argue that in the event of any ambiguity in the provisions of the *Act* relating to the proper make-up of a partial wind up group, the practice of the Superintendent could be a relevant factor in arriving at a proper interpretation of those provisions.

The first set of interrogatories relates to situations where the Superintendent plays two roles; first, in ordering a partial wind up of a plan and, second, in approving or refusing to

approve, the report in respect of such a wind up. In deciding on whether to order a partial wind up under paragraph 69(1)(d) of the *Act*, the Superintendent must focus on whether a significant number of members of a pension plan have ceased to be employed as a result of the discontinuance of part of the business of the employer or as a result of the reorganization of the business of the employer. It is certainly possible that, in some instances, the inclusion or exclusion of certain of the categories of employees, referred to in the interrogatories, may be determinative of the significance of the number of affected members of the plan. Indeed, the Superintendent has recently taken the position, in a proceeding before this Tribunal, that some, at least, of those who terminated their employment with an employer voluntarily during a partial wind up period should be included for the purpose of determining whether a significant number of employees are affected by a particular reorganization (see *London Life Insurance Company v. Superintendent of Financial Services et al.*, FST Decision Number 23, February 7, 2001). Thus, although the Superintendent may not make inquiries as to the circumstances of employees who cease to be employed during a partial wind up period, she has not always been neutral as to the inclusion or exclusion of some of the categories of employees referred to in the interrogatories.

Therefore, while there may not be a conscious and consistent practice on the part of the Superintendent as to the treatment of all or some of the categories of employees, referred to in the interrogatories, we think that the Applicant should have the opportunity of exploring the possibility that there is such a practice of a kind that would assist in making its proposed arguments. Although the existence

of such a practice might be elicited through the evidence of actuaries and others who have dealt with the Superintendent's office in this regard, that would be a much less efficient way of demonstrating the practice than obtaining answers to the interrogatories and would likely prolong the hearing in this matter. This is a relevant consideration for us; see Rule 19.01(d) of the Interim Rules of Practice and Procedure of the Financial Services Tribunal.

The Superintendent also maintained that the answers to these interrogatories were not arguably relevant to any of the issues in this proceeding because none of the potential arguments of the Applicant, to which the interrogatories relate, was available to it in the circumstances of this case. With respect to the argument based on the doctrines of legitimate expectation and estoppel, the Superintendent said that this argument was foreclosed by the decision of the Ontario Divisional Court in *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)* (2001), 198 D.L.R. (4th) 109, and by other judicial decisions.

We do not think that the settled law in Ontario on either of these doctrines is such as to preclude all realistic possibility of the Applicant successfully relying on such a doctrine as against the Superintendent in a proceeding, such as this, involving an application of the *Act*. Although *Monsanto* also arose under the *Act*, the issues and circumstances were quite different from those in this proceeding. Therefore, we conclude that the answers to the first set of interrogatories are arguably relevant to Issue 1(b) and that Issue 1(b) is not frivolous.

### The Second Set of Interrogatories

The second set of interrogatories to which the Applicant continues to insist on answers involve questions about the practices, policies



and internal documents of the Superintendent with respect to the acceptance or refusal of partial wind up reports in which grow-in benefits are provided (and the method of calculation of the relevant benefits), and reports in which such benefits are not provided, in either case for employees who were:

- employed by the employer in Ontario or Nova Scotia at some time but were employed elsewhere at the time their employment with the employer ceased;
- employed by the employer in Ontario or Nova Scotia when their employment with the employer ceased but had been employed elsewhere during their term of service with the employer.

These interrogatories also ask about the practices, policies and internal documents of the Superintendent concerning the reduction of grow-in benefits, in either of the above situations, on account of service outside of Ontario and Nova Scotia. In the event that there are policies and internal documents on the subject, the Applicant asks for copies.

The Applicant maintained that the answers to these interrogatories are arguably relevant to the issue of whether the doctrines of legitimate expectation, abuse or improper exercise of discretion or estoppel apply, in the circumstances of this case, to affect the calculation of grow-in benefits for members of the Plans who were working outside Ontario and Nova Scotia at the time their employment with the Applicant ceased but who worked in Ontario or Nova Scotia at some time during their term of service with the Applicant (Issue 2(c)). The Applicant also says that the answers are potentially relevant should we find that there is any ambiguity in the provisions of the *Act* that determine the entitlement to grow in benefits of those working outside Ontario and Nova Scotia at the time of a partial wind up but who previously worked in either of those provinces.

The Superintendent maintained, among other things, that the answers to these interrogatories are not arguably relevant to the issue relating to the effect of the doctrines of legitimate expectation and estoppel because the decision of the Ontario Divisional Court in *Monsanto* and other judicial decisions precluded the Applicant's potential argument on that issue. The

Superintendent also claimed privilege and confidentiality for internal documents prepared for the Minister of Finance and the Superintendent containing advice and discussion with respect to Issue 2 matters, arguing that those documents were of tenuous relevance in any event.

We come to the same conclusion on the first of these positions of the Superintendent as we did in respect to her comparable position on the first set of interrogatories. We do not think that the settled law on Ontario on legitimate expectation or estoppel is such as to preclude any realistic possibility of an argument based on either of those doctrines succeeding against the Superintendent in a case, such as this, involving the application of the *Act*. Therefore, we conclude that the answers to the second set of interrogatories are arguably relevant to Issue 2(c) and that Issue 2(c) is not frivolous.

As to the second position of the Superintendent, we conclude that she is not entitled to object to the disclosure of documents in proceedings before this Tribunal on the basis that they constitute confidential material prepared for a Minister or other government official. If the law of privilege were to apply to any of those documents, say because they represent confidential communications to the Crown from its counsel, the Superintendent would be entitled to resist disclosure.

## ORDER

We order the Superintendent to respond to the first and second sets of the Applicant's interrogatories in this matter within six weeks of the date of this order subject only to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies.

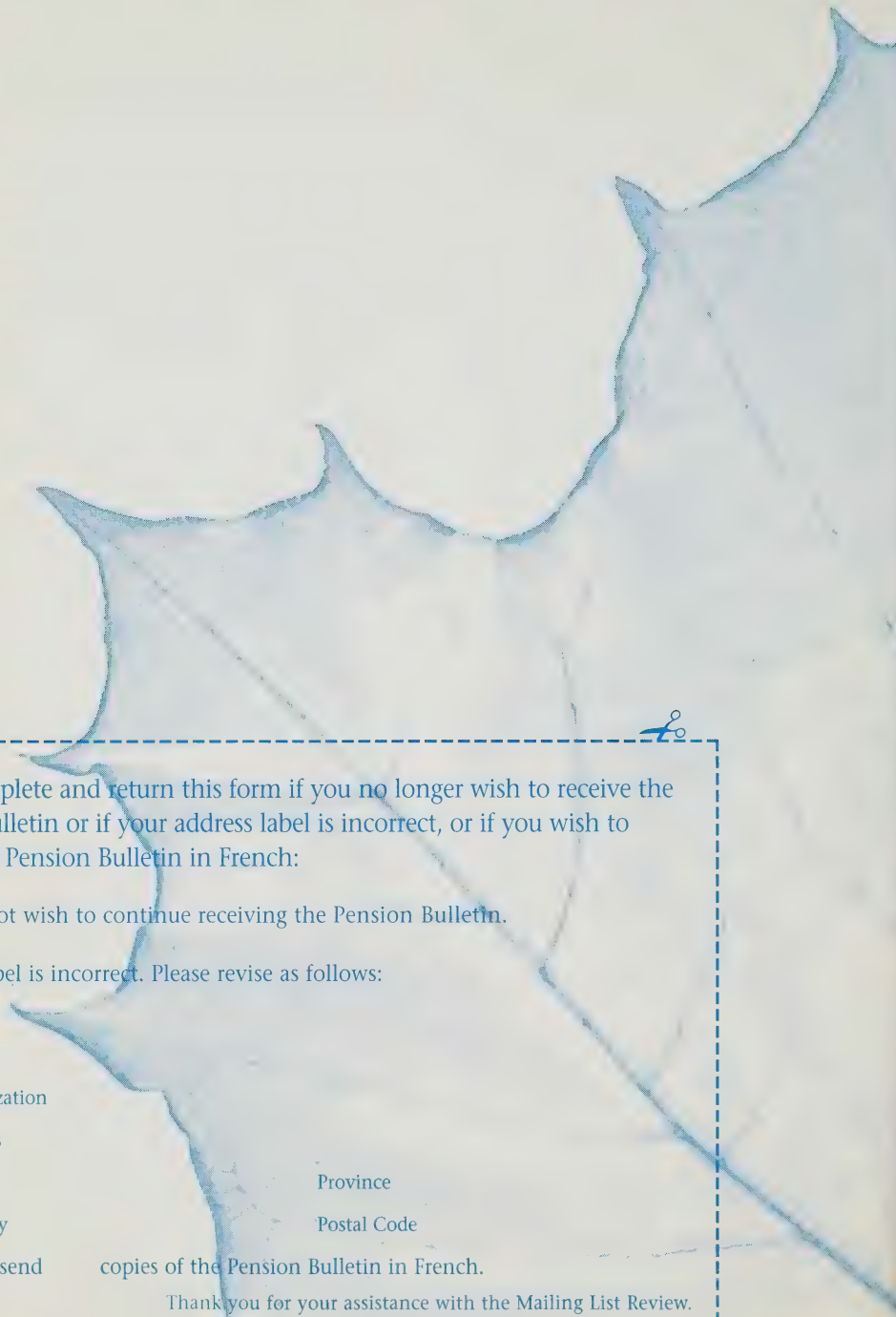
DATED at North York, Ontario, this 10th day of September, 2001.

Colin H.H. McNairn,  
Vice Chair of the Tribunal and Chair of the Panel  
Louis Erlichman,  
Member of the Tribunal and of the Panel  
William M. Forbes,  
Member of the Tribunal and of the Panel



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# PENSION BULLETIN

MAY 2002 • VOLUME 11, ISSUE 2

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*The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.*

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## GENERAL ANNOUNCEMENTS

### Contacts for Plan Specific Enquiries

Contact Name	Title	Phone Number	Allocation Alpha range
Jaen Pringi	Sr. Pension Officer	416-226-7826	
Gulnar Chandani	Pension Officer	416-226-7770	#'s - Associated
Penny McIlraith	Pension Officer	416-226-7822	Associates - Bulk
Tim Thomson	Pension Officer	416-226-7829	Bull - Cem
Irene Mook Sang	Pension Officer	416-226-7824	Cen - Cz
Kathy Carmosino	Pension Officer	416-226-7823	I - King
Preethi Anthonypillai	Pension Officer	416-226-7812	Kinh - Mark
Stanley Chan	Pension Officer	416-226-7842	
Gino Marandola	Sr. Pension Officer	416-226-7820	
Calvin Andrews	Pension Officer	416-226-7768	Gko - H
Jeff Chuchman	Pension Officer	416-226-7807	D - Em
John Graham	Pension Officer	416-226-7774	Marl - Nes
Julina Lam	Pension Officer	416-226-7815	Net - Pep
Anna Vani	Pension Officer	416-226-7833	Peq - Rob
Larry Martello	Pension Officer	416-226-7821	
Bill Qualtrough	Pension Officer	416-226-7791	
Rosemin Jiwa Jutha	Sr. Pension Officer	416-226-7816	
John Khing Shan	Pension Officer	416-226-7237	En - Gkn
Peter Dunlop	Pension Officer	416-226-7860	Roc - Sons
Hae-Jin Kim	Pension Officer	416-226-7876	Sont - The Drop
David Allan	Pension Officer	416-226-7803	The Droq - Unicorp
Mark Lucyk	Pension Officer	416-226-7781	Unicorp - Z
Robin Gray	Pension Officer	416-226-7855	

### Pension Division – Staff Changes

John Khing Shan replaces Chantal Laurin as Pension Officer (bilingual) while she is on maternity leave. Mark Lucyk, Bill Qualtrough, Stanley Chan and Robin Gray join the Pension Plans Branch as Pension Officers.

Hirsh Tadman joins the Pension Policy Unit as a Senior Policy Analyst.





## HEARINGS/COURT MATTERS

The information set out below is current to March 22, 2002.

### Enforcement Matters

Charges laid under the *Pension Benefits Act*.

#### i. Canadian Corporation Creation Center (CCCC)

Charges under the *Pension Benefits Act* (the "Act") were laid against the CCCC Pension Plan administrator, the individual trustees, CCCC and related companies on September 12, 2001. The charges relate to a scheme whereby locked-in accounts were assigned to the defendant companies in return for a promise to extend a loan to the locked-in account holder. A first appearance occurred on October 9, 2001. A second appearance occurred on December 6, 2001, at which time one of the individual trustees plead guilty to a charge of failing to administer the CCCC Pension Plan in accordance with the *Act*. A fine of \$5000 inclusive of victim surcharge was levied. The charges against the other defendants were put over to March 21, 2002. On March 21, 2002, the matter was put over to April 23, 2002.

#### ii. Visentin Steel Fabricators Ltd.

Charges were laid for failing to file annual information returns. The first appearance for the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, the matter was put over for a third appearance on January 15, 2002. On January 15, 2002, the matter was put over for a fourth appearance on February 12, 2002. On February 12, 2002, a trial date was set for April 12, 2002.

#### iii. Kendan Manufacturing Limited

Charges were laid for failing to file an annual information return and to pay the PBGF assessment for two consecutive years. The first appearance for the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, the matter was put over for a third appearance on January 15, 2002. On that date, Kendan plead guilty to the charges. A total fine of \$2000 in respect of all charges was levied.

#### iv. Bimeda-MTC Animal Health Inc./ Bimeda-MTC Sante Animale Inc.

Charges were laid in respect of two pension plans administered by Bimeda. In one pension plan, Bimeda was charged for failing to file a financial statement. In respect of the other plan, Bimeda was charged for failing to file financial statements for two consecutive years. The first appearance for the charges was on March 5, 2002, at which time the matter was put over to April 16, 2002.

#### v. Dubreuil Forest Products Ltd.

Charges were laid for failing to file financial statements for two consecutive years. The first appearance for the charges was on March 5, 2002, at which time the matter was put over to May 21, 2002.

#### vi. Darcor Ltd.

Charges were laid for failing to file an annual information return and failing to pay the filing fee associated with another annual information return. On March 5, 2002, Darcor plead guilty to all charges. A total fine of \$2000 was levied in respect of all charges.

**vii. Pacific Paving Ltd.**

A charge was laid for failing to file a financial statement. The first appearance for the charge was on March 5, 2002, at which time the matter was put over to April 16, 2002.

**viii. Pass & Seymour Canada, Inc.**

Charges were laid for failing to file a financial statement and an annual information return. The first appearance for the charges was on March 5, 2002, at which time the matter was put over to April 16, 2002.



## **Court Matters**

### **i. Régime de retraite des employés et membres de Canadian Corporation Creation Center, Registration Number 1062363 (the "CCCC Pension Plan")**

FSCO has intervened in a proceeding before the Quebec Superior Court for a judgement regarding the ownership of funds contained in certain bank accounts held at a Montreal branch of the National Bank of Greece (Canada). The basis for FSCO's intervention is that the accounts contain funds that are attributable to the CCCC Pension Plan. Effective August 3, 2001, the Deputy Superintendent, Pensions, is acting as administrator of the CCCC Pension Plan. On October 19, 2001, the Court granted FSCO's request for intervener status. In addition, the Court granted FSCO's separate motion for seizure before judgement freezing the funds in the accounts. On January 10, 2002, the Court granted judgement on the consent of the parties requiring that assets in the accounts be paid over to FSCO.

### **ii. Retirement Income Plan for Salaried Employees of Weavexx Corp., Registration Number 264663 (the "Weavexx Plan")**

On May 30, 2000, the Superior Court of Justice, Ontario Divisional Court, granted an application for judicial review brought by a group of former members of the Weavexx Plan to set aside the Superintendent of Pensions' August 1997 consent to a transfer of assets from the Weavexx Plan to the BTR Pension Plan for Canadian Employees. The decision of the Court was based on the conclusion that the Superintendent had exceeded his jurisdiction in failing to consider the issues

of surplus, trust and a requested partial windup of the Weavexx Plan.

An addendum, issued by the Court on November 16, 2000, stated that the return of assets to the Weavexx Plan was not to be the subject of a Financial Services Tribunal ("Tribunal") hearing and that any decision made by the Superintendent of Financial Services in respect of the requested partial windup was to be referred to the Tribunal for a hearing. The Court also awarded the applicants \$54,294.06 in costs.

The Ontario Court of Appeal granted both the Superintendent and BTR, Inc. leave to appeal these decisions on February 26, 2001. Both appeals were heard on November 19, 2001.

On February 14, 2002, the Court of Appeal released its decision. The appeal was dismissed except for two aspects: the Court confirmed that the employer does not owe a duty of fairness to the members as the employer does not make the decision consenting to the transfer of assets; and the Court confirmed that an automatic hearing before the Tribunal would ensue as the result of any decision made by the Superintendent concerning the partial windup request.

### **iii. Colgate-Palmolive Canada, Inc. Pension Plan for Salaried and Non-Union Hourly Employees**

On November 29, 2000, the Superior Court of Justice, Ontario Divisional Court, dismissed an application for judicial review brought by a group of former members of the Colgate-Palmolive Canada, Inc. Pension Plan for Salaried and Non-Union Hourly Employees who wanted to set aside the Superintendent of Pensions' December 1995 consent to a transfer



of assets from the Bristol-Myers Canada Inc. Retirement Income Plan to the Colgate Plan. The applicants also wanted the Superintendent's August 1994 approval of a Partial Windup Report filed by the Colgate Plan set aside.

The Court found that the applicants, as members of the importing pension plan, had no right to object to the transfer; any right to object would have been exercised when the amendment to the Colgate Plan respecting the transfer was filed. The Court also found that there was no evidence to support a partial windup involving additional former members of the Colgate Plan.

On February 26, 2001, the Ontario Court of Appeal granted leave to appeal to the applicants. The Court ordered that this appeal be heard together with the Weavexx appeal. Both appeals were heard on November 19, 2001.

On February 14, 2002, the Court of Appeal released its decision. The appeal was dismissed except that the Court found that the Divisional Court had erred in striking certain portions of the Applicants' affidavit. No costs were awarded.

#### **iv. Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230, FST File Number P0013-1998**

On November 30, 1998, the Superintendent issued a Notice of Proposal to Refuse to Approve a Partial Windup Report filed by Monsanto Canada Inc. ("Monsanto") in respect of a 1997 plant closure. The grounds for the refusal were: (a) the Windup Report did not deal with the surplus distribution on partial windup; (b) the payment of benefit enhancements on windup to certain members constituted an inequitable distribution of surplus, and an

indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) the Windup Report provided that the funds relating to benefits of those in the partial windup group were to remain in the pension plan's fund rather than being distributed by way of a purchase of annuities.

On December 31, 1998, Monsanto requested a hearing before the Financial Services Tribunal (the "Tribunal") in respect of the Notice of Proposal to Refuse to Approve.

The hearing was held on January 10-12 and February 7-11, 2000. The Tribunal issued majority and minority Reasons dated April 14, 2000, which were published in Volume 9, Issue 2 of the Pension Bulletin. In the result, the Tribunal directed the Superintendent to approve the Partial Windup Report.

The decision of the Tribunal was appealed to the Superior Court of Justice, Ontario Divisional Court. On March 19, 2001, the Court allowed the appeal on the basis of its conclusion that the first ground set out in the Notice of Proposal ((a) above) was a proper basis for the Superintendent to refuse to approve the Partial Windup Report and that the Superintendent was entitled to rely on that ground. In this respect, it adopted the minority Reasons of the Tribunal and directed the Superintendent to carry out the Notice of Proposal to Refuse to Approve.

The Court found that the Financial Services Tribunal majority's interpretation of subsection 70(6) of the *Pension Benefits Act* was unreasonable. The Court also found that the Financial Services Tribunal majority's finding on legitimate expectation misinterpreted the legislation and was an error in law.



Monsanto, the Association of Canadian Pension Management, and the National Trust Company each sought leave to appeal this decision. On June 28, 2001, the Ontario Court of Appeal granted leave. The appeal has been scheduled for April 29 and 30, 2002.

#### **v. Ontario Teachers' Pension Plan Board**

On May 31, 2000, the Financial Services Tribunal (the "Tribunal") rendered a decision that a former spouse of a plan member who had signed a separation agreement awarding her an interest in the plan member's pension (including death benefits) was not entitled to any interest in pre-retirement death benefits pursuant to section 48 of the *Pension Benefits Act*. The Tribunal relied on three major grounds in directing the Superintendent not to issue the Notice of Proposal ordering the Board to pay the former spouse these benefits:

- a) a domestic contract is only enforceable under subsection 48(13) of the *Pension Benefits Act* if it has been signed by the plan member's current spouse at death;
- b) a plan member has no proprietary interest in death benefits and therefore cannot assign them in a separation agreement;
- c) clearer statutory language is needed to oust the plan member's current spouse's entitlement under subsection 48(1).

The former spouse has appealed this decision to the Ontario Divisional Court. The appeal is scheduled to be heard on May 24, 2002.

#### **vi. Dustbane Enterprises Limited**

On June 7, 2002, the Ontario Divisional Court will hear an appeal arising from a Financial Services Tribunal ("Tribunal") decision which directed the Superintendent to carry out a Notice of Proposal ordering Dustbane

Enterprises Limited to pay a deficit owing to the Plan fund for the Retirement Plan for Employees of Dustbane Enterprises Limited on the partial windup of the plan. The majority Tribunal decision held that the Plan was not a multi-employer pension plan and that any delay in processing the partial windup could not excuse non-compliance with the *Pension Benefits Act*. The dissenting decision held that the Plan was a multi-employer pension plan and that therefore, the distributors who were the subject of the partial windup were responsible for funding the deficit; however, some consideration should be given to Dustbane assisting with the payment as the distributors were not kept informed generally about the Plan and because a large part of the deficit was attributable to actuarial fees. The dissenting decision agreed with the majority decision on the delay issue.



## LEGISLATIVE CHANGES/REGULATORY POLICIES

Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

SECTION:	Deadlines
INDEX NO.:	D050-801
TITLE:	Extension of Deadline for Filings - PBA s. 105 - Regulation 909 ss. 3(2), 13(1), 14(10), 18(1), 18(7), 76(4)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (March 2002)
EFFECTIVE DATE:	March 1, 2002

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

### **Applications for Extension of Filing Deadline**

Section 105 of the PBA grants the Superintendent of Financial Services ("Superintendent") the authority to extend any procedural time limit related to the powers conferred on or duties assigned to the Superintendent under the PBA or the Regulation. However, the Superintendent has the authority to extend such a time limit only if satisfied that there are reasonable grounds for applying for the extension. In determining whether reasonable grounds exist for applying for the extension, the Superintendent will consider whether the extension will adversely affect member benefits.

For the extension of time limits for filings required under subsection 3(2), 13(1), 14(10), 18(1), 18(7) or 76(4) of the Regulation (funding valuation report, annual information return,

Pension Benefit Guarantee Fund assessment certificate, or pension fund/plan financial statements), signed applications from the Plan Administrator or authorized agent should be directed to the Pension Officer responsible for the pension plan and should clearly provide the following:

1. Plan name
2. Plan registration number
3. Type of filing
4. Period covered by the filing
5. Requested filing date
6. Reason for the request
7. Confirmation that the extension will not adversely affect member benefits. For the extension of time limits for funding valuation reports, evidence to support the confirmation must be provided. For the extension of time limits for filings other than for funding valuation reports, the Superintendent will assess the confirmation and may, if not satisfied with the confirmation in the particular case, require evidence to support the confirmation provided.



Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

SECTION :	Locked-In Accounts
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*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

### **Introduction: Locked-In Accounts under the Pension Benefits Act**

The introduction of pension reform in the mid-1980's, specifically the areas of portability options and commuted values, paved the way for the transfer of pension money to locked-in accounts in Ontario. Clause 42(1)(b) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 ("PBA"), provides that a former member of a pension plan who, on or after January 1, 1988, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension, is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension into a

*prescribed retirement savings arrangement* (which is referred to in this policy as a "locked-in account"). Previously, when members of a pension plan terminated employment or plan membership, their only recourse was to leave the accrued benefit in their former employer's pension fund and arrange to be paid a pension at retirement age.

By allowing for the direct transfer of the commuted value of former members' pension benefits into locked-in accounts, the PBA gives individuals greater control over their retirement monies. To ensure that locked-in accounts reflect certain principles of pension plans, the legislation contains restrictions that are intended to preserve the money for retirement and provide a lifetime stream of retirement income for former members and their spouse or same-sex partner, if any. These restrictions are generally referred to as the locking-in rules.

This policy will provide an overview of locking-in and review certain rules common to all locked-in accounts. The rules and requirements that apply to each specific type of locked-in account will be the subject of other policies.

### **Administration of Locked-In Accounts: Responsibilities of Plan Administrators and Financial Institutions**

Locked-in accounts include Locked-In Retirement Accounts ("LIRAs"), Life Income Funds ("LIFs") and Locked-In Retirement Income Funds ("LRIFs"). To ensure that these savings accounts receive special tax-assisted treatment under the *Income Tax Act* (Canada) ("ITA"), LIRAs must comply with the ITA requirements for Registered Retirement Savings Plans ("RRSPs"), and LIFs and LRIFs must comply with the ITA requirements for Registered Retirement Income Funds ("RRIFs"). This policy will refer to LIRAs, LIFs and LRIFs collectively as "locked-in accounts".

In accordance with subsection 20(3) of the Regulation 909 made under the PBA ("the Regulation"), transfers from pension funds to locked-in accounts are permitted only if the financial institutions that issue the accounts agree to administer the transferred funds, including all earnings, as a pension or deferred pension in accordance with the PBA and Regulation. In other words, the financial institution must, among other things, ensure that the money remains locked-in.

The rules which prevent money in locked-in accounts from being unlocked are found in section 67 of the PBA: a pension, deferred pension, pension benefit, annuity or *prescribed retirement savings arrangement* that results from a purchase or transfer under section 42, 43 or 48 or subsection 73(2) to which a person is entitled is not capable of being commuted or surrendered, in whole or in part, during the

person's life. Corresponding restrictions are found in section 21 of the Regulation for LIRAs, subsection 3(1) of Schedule 1 for LIFs, and subsection 3(1) of Schedule 2 for LRIFs.

When members wish to transfer their locked-in account from one financial institution ("the transferor") to another ("the transferee"), the transferor must receive confirmation that the money will remain locked-in before making the transfer. Locked-in accounts can only be transferred to other locked-in accounts, or in certain circumstances, to pension funds (that are also locked-in).

Pension legislation provides certain rights and entitlements to the spouses or same-sex partners of pension plan members if the member dies prior to retirement, and also after the member begins to receive a retirement income. Spouses and same-sex partners continue to have this protection when pension money is transferred to locked-in accounts. For each type of locked-in account, there are specific requirements governing survivor benefits, which are discussed in separate policies dealing specifically with LIRAs, LIFs and LRIFs. [Note: The use of the term "spouse" in this policy has the same meaning as "spouse" as defined in the PBA, which includes a common-law spouse. The term "same-sex partner" has the same meaning as "same-sex partner" as defined in the PBA.]

When financial institutions fail to administer locked-in accounts as required, they are in contravention of the PBA. In addition to any action that may be taken by FSCO, if financial institutions release locked-in funds in contravention of the PBA or do not comply with the survivor benefit requirements, spouses or same-sex partners who may be denied their rights and benefits provided under pension legislation may initiate legal proceedings against the financial institutions involved.



## How to Administer Locked-In Accounts: Multi-jurisdictional Considerations

Subsection 20(3) of the Regulation prohibits the administrator or the agent of the administrator of a registered pension plan (the initial transferor) from making a transfer from a plan fund unless the financial institution to which the money is transferred (the transferee) agrees to administer the funds as a pension or deferred pension (e.g., locked-in). When locked-in money is subsequently transferred to another financial institution, the new institution must also administer the funds as a pension or deferred pension.

While pension legislation of each jurisdiction in Canada which regulates pension plans permits the transfer of money from a registered pension plan to a locked-in account, there are differences in each jurisdiction's rules. Financial institutions that administer locked-in accounts are responsible for administering them as a pension or deferred pension.

The key to understanding the rules that determine how any individual transfer amount must be administered is knowing which pension legislation originally applied to the member under the plan; the legislation of that jurisdiction will continue to apply after the transfer. Where the money is being transferred in accordance with the PBA and Regulation to a financial institution in another Canadian jurisdiction, all parties must ensure that the transfer satisfies Ontario's rules, i.e., that the funds in the locked-in account continue to be administered in accordance with Ontario pension law.

### Pension Legislation in Canada

Registered pension plans must be registered under the statute of one of the following federal or provincial jurisdictions in Canada:

Alberta	<i>Employment Pension Plans Act</i>
British Columbia	<i>Pension Benefits Standards Act</i>
Manitoba	<i>Pension Benefits Act</i>
New Brunswick	<i>Pension Benefits Act</i>
Newfoundland	<i>Pension Benefits Act, 1997</i>
Nova Scotia	<i>Pension Benefits Act</i>
Ontario	<i>Pension Benefits Act</i>
Québec	<i>Supplemental Pension Plans Act</i>
Saskatchewan	<i>Pension Benefits Act, 1992</i>
Federal (Canada)	<i>Pension Benefits Standards Act, 1985 (Canada)</i>

The *Pension Benefits Standards Act, 1985* (Canada) ("PBSA (Canada)") is the federal statute which regulates pensions for plan members who work in "included employment". Transfers of locked-in money made on behalf of persons who worked in included employment must be administered as required by the PBSA (Canada). Included employment is work in any undertaking or business that is within the legislative authority of the Parliament of Canada (e.g., broadcasting, transportation, banking, etc.). A complete definition of included employment is contained in the PBSA (Canada). Pension plan members who are employed in the Northwest Territories, Yukon Territory and Nunavut are also covered by the PBSA (Canada).

Provincial statutes regulate pensions for plan members who are employed in those provinces and who do not work in included employment. The administration of locked-in money transferred on behalf of a person who terminates employment in a specific province continues to be subject to that provincial statute. If a plan member does not actually report to work in any one province, that individual is considered to be employed in the province where the employer who pays the individual's remuneration has an office or an establishment.



## **Pension Plans with Members in More than One Province**

If all the members of a pension plan are employed in one province, the plan must be registered under the statute of that province. That statute will regulate how the plan is funded and administered. The statute will also regulate how and when portability options become available to the members of the plan. All locked-in transfers from the pension plan must be administered as required by the statute of the jurisdiction of registration. Similarly, if all of the members of a pension plan are employed in included employment, the plan must be registered under the PBSA (Canada). All matters related to that plan are subject to the requirements of the PBSA (Canada).

The administration of a pension plan and any locked-in transfers made from that plan becomes more complex where all plan members are not employed in one province or are not all employed in included employment. Where plan members work in two or more jurisdictions, the pension plan is registered in the jurisdiction where the majority of the plan members are employed. The province of registration does not dictate the portability options; this is determined by the province of employment as outlined above.

For example, where a pension plan registered under the Ontario PBA also has members who work in included employment and members who are employed in Alberta, the Ontario statute regulates all matters, including portability, for only the Ontario members. The federal PBSA applies to members in included employment and the Alberta *Employment Pension Plans Act* regulates all matters for the Alberta members. Locked-in money transferred with respect to the Ontario members remains subject to the

Ontario PBA. This means that any transfer to a locked-in account belonging to an Ontario member is permitted only where the locked-in account issued by a financial institution meets Ontario's requirements.

## **Contracts of Locked-In Accounts Approved by Other Jurisdictions May Not Meet Ontario's Requirements**

Some jurisdictions require specimen documents for locked-in accounts to be submitted to the respective regulatory authority for approval, and maintain approved lists of financial institutions that provide locked-in accounts which meet the requirements of their respective legislation. Such a list of approved vendors or contracts, however, only indicates compliance with the legislation of the jurisdiction that maintains the list.

Ontario does not maintain a list of approved financial institutions that provide locked-in accounts and does not require that specimen documents be submitted for approval. A plan administrator who is making a transfer with respect to an Ontario member is subject to subsection 20(3) of the Regulations, and thus cannot complete the transfer until the transferee has agreed to continue administration in accordance with the requirements of the PBA and Regulation. The Regulation also contains specific requirements for LIRAs, LIFs and LRIFs that the financial institution must abide by.

## **Recent Ontario Changes Affecting Locked-In Accounts: Shortened Life Expectancy, Small Amounts, Amounts that Exceed ITA Limits, and Financial Hardship**

Effective March 3, 2000, the *Pension Benefits Statute Law Amendment Act, 1999* ("PBSLAA") amended the PBA in the following ways with respect to locked-in accounts:



## 1. Shortened Life Expectancy

March 3, 2000, subsection 49(1) of the PBA and subsection 21(2)(d) of the Regulation provided that the owner of a LIRA could apply to the financial institution that administers the LIRA to have the money paid out if the pension plan from which the money originated contained a provision allowing for the variation in payment of the pension due to the shortened life expectancy of that person. This option was not then available to owners of LIFs or LRIFs, but subsection 49(1) now applies to LIFs and LRIFs as well as LIRAs by virtue of sections 3 of Schedules 1 and 2 under the Regulation.

As of March 3, 2000, there are two ways in which an individual with shortened life expectancy may receive a variation of payment: pursuant to subsection 49(1) of the PBA (under the terms of the originating pension plan if the individual owns a LIRA, LIF or LRIF and the plan contains such provision) or pursuant to subsection 49(2) of the PBA (for owners of LIRAs, LIFs and LRIFs, regardless of whether the originating plan contains a shortened life expectancy provision).

If the originating plan contains a provision for shortened life expectancy, a LIRA, LIF or LRIF owner can apply for variation of payment under the terms of the plan to the financial institution holding the account. Whether the individual has a disability that is likely to "shorten considerably his or her life expectancy" is essentially a medical question, and verification by a qualified medical practitioner should be submitted to the financial institution. On the basis of that opinion and confirmation that the former pension plan does contain a shortened life expectancy provision, the financial institution should determine whether a variation in payment is appropriate in the

circumstances (i.e., it meets the criteria for shortened life expectancy set out in the original plan). There is no prescribed form that must be used when an individual applies pursuant to subsection 49(1).

Regardless of whether the originating plan contains a shortened life expectancy provision, anyone who owns a LIRA, LIF or LRIF and suffers from shortened life expectancy can apply to the financial institution for variation of payment. All applications under subsection 49(2) must be made to the financial institution on a Superintendent-approved form (Form 5). Generally, the owner must provide the consent of his or her spouse or same-sex partner, if any, and a statement from a physician licensed to practice medicine in a jurisdiction in Canada that, in the opinion of the physician, the owner has an illness or physical disability that is likely to shorten his or her life expectancy to less than two years. The owner may apply to withdraw some or all of the money in the account.

If the originating plan does contain a shortened life expectancy provision, the individual may apply under those terms or under the rules set out under subsection 49(2). (Detailed criteria for s. 49(2) shortened life expectancy are found in s. 51.1 of the Regulation.) In some cases, the plan may provide less strict terms (such as a life expectancy of five years) and it may be more advisable to apply under those terms.

## 2. Small Amounts

If an individual is at least 55 years old and the total value of all assets held in every Ontario LIRA, LIF and LRIF the individual owns is less than 40% of the Year's Maximum Pensionable Earnings (the "YMPE", which is a dollar figure set each year in relation to the Canada Pension



Plan); for applications signed in 2002, the amount is 40% of \$39,100 (the YMPE for 2002 = \$15,640), he or she may apply to the financial institution that administers the LIRA, LIF or LRIF to withdraw all of the money in the account – a partial withdrawal is not permitted. The Application must be made to the financial institution on a Superintendent-approved form (Form 5). The owner must provide the consent of his or her spouse or same-sex partner unless they are living separate and apart at the time the application is signed.

The value of the assets held in each Ontario locked-in account must be based on the most recent statement provided by the financial institution, and the financial statement must not be dated more than 1 year before the date the application is signed.

### **3. Amounts that Exceed ITA Limits**

The ITA imposes a limit on the amount that an individual may transfer from a registered pension plan to a locked-in account when a former member terminates employment or terminates membership in the plan and is entitled to a deferred pension. Amounts transferred pursuant to subsection 42(1) of the PBA that do not exceed the ITA limit may only be transferred to a LIRA, LIF or LRIF. Effective March 3, 2000, if the amount of the commuted value of an individual's deferred pension that is to be transferred to a locked-in account is greater than the amount allowed under the ITA for such a transfer, the administrator shall pay the excess amount to the individual in a lump sum. However, if an amount that exceeds the ITA limit has already been transferred to a locked-in account, section 22.2 of the Regulation allows the owner of the account to apply to the financial institution to withdraw the excess amount and any subsequent invest-

ment earnings, including any unrealized capital gains or losses that are attributable to the excess amount, or to transfer that amount to a non-locked-in RRSP or RRIF. It is up to the financial institution that administers the account to calculate this aggregate amount. The application must be made on a Superintendent-approved form (Form 5), and must include a written statement from either the plan administrator or the Canada Customs and Revenue Agency (CCRA, formerly Revenue Canada) that sets out the excess amount that was transferred into the locked-in account. It is not necessary for a spouse or same-sex partner to consent to this withdrawal.

### **4. Financial Hardship**

Effective May 1, 2000, individuals who qualify under certain prescribed circumstances of financial hardship may apply to the Superintendent of Financial Services for access to the money in their locked-in accounts. The rules and requirements for making such applications will be set out in a future policy.

### **Frequently Asked Questions About Locked-In Accounts**

*Do the locking-in rules expire when an individual reaches a certain age, such as 65?*

Money in locked-in accounts is always subject to the rules of the PBA and Regulation, including the non-commutation (locking-in) rules, regardless of the individual's age.

*Do the locking-in rules cease to apply when an individual leaves Canada?*

Although some jurisdictions allow individuals who have left Canada to receive the money in their locked-in accounts in a lump sum, Ontario has no such provision. For individuals with Ontario locked-in accounts who leave Canada, their locked-in accounts continue to



be governed by Ontario law, and they must receive payment in the same manner as if they were still in Canada (such as through a life annuity, LIF or LRIF).

*Do the locking-in rules cease to apply if locked-in money is transferred to a financial institution outside Ontario?*

Money in a locked-in account cannot be transferred to another financial institution, whether inside or outside Ontario, unless the money continues to be administered in accordance with the PBA and Regulation, including the locking-in requirements. Since Ontario law cannot be enforced outside Canada, locked-in money cannot be transferred to financial institutions outside Canada.

*Is interest credited on the money in locked-in accounts also locked in?*

The rule which prevents the withdrawal of money from locked-in arrangements applies to all money in the account (s. 21(2)(a) of the Regulation for LIRAs, s. 3(1) of the LIF Schedule 1 and s. 3(1) of the LRIF Schedule 2).

*Where a contract provides that money is "locked-in" at a fixed interest rate for a certain period of time, do the pension locking-in provisions expire when the time period ends?*

No; this confuses the pension locking-in rules with the period of time that the money is subject to a guaranteed rate of return and cannot be accessed without penalty. The pension locking-in rules apply as long as the contract is in effect.

*Can locked-in money be borrowed against or be used as collateral to secure a loan?*

This is specifically prohibited by sections 65 and 66 of the PBA.

*Can locked-in accounts be combined with non-locked-in accounts?*

The purpose of locked-in accounts is to hold monies that originated from registered pension plans (RPPs). Accordingly, the only monies that may be deposited in locked-in accounts are those which originated from a pension plan or another locked-in account. Individuals should not combine locked-in accounts with non-locked-in accounts.

*Can locked-in accounts hold an owner's personal mortgage?*

Yes, provided that money in locked-in accounts are held as self-directed LIRAs, LIFs or LRIFs. This type of arrangement allows investment in a number of options not usually available under arrangements that are not self-directed. These options include Canada Savings Bonds, bonds, mutual funds, Treasury Bills, individual stocks, and home mortgages.

Ontario's pension law requires strict adherence to the PBA and Regulation in the administration of locked-in funds. Self-directed locked-in accounts that are designed to hold a personal mortgage must be administered at arms-length from the homeowner. The mortgage must be insured and set at rates generally available in the open market. If mortgage payments are in default, the administrator of the mortgage may foreclose. In such circumstances, the property can be sold and the outstanding loan amount paid back into the locked-in account.

Financial institutions administering locked-in self-directed accounts must observe both federal and provincial legislation. The CCRA regulates the investment options available, such as the percentage of assets which may be invested in foreign property. Ontario requires locked-in money to be administered according to the PBA



and Regulation, and financial institutions which fail to administer locked-in money accordingly may be subject to prosecution.

*Why is some pension money locked-in at termination of employment and some not? How do the pre-1987 vesting and locking-in provisions apply to former members who terminate employment after January 1, 1987?*

As of January 1, 1988, both employer and employee contributions made after January 1, 1987 are vested and locked-in after two years of plan membership, and may only be used to provide a retirement income. However, benefits earned prior to 1987 (if not vested and locked-in earlier by plan provisions) only become locked-in when the member reaches age 45 and has 10 years of service. If not locked-in under these rules, employee contributions may be refunded on termination of employment.

The pre-1987 requirements for vesting and locking-in only apply to benefits that accrued prior to January 1, 1987. If the former member was a plan member for 10 years or has 10 years service and is at least 45 as of the date of termination of employment or membership, the pre-1987 benefits are vested and locked-in. However, if the 10-and-45 requirement is not met, the pre-1987 benefits are not vested and any contributions the individual made may be refunded to him or her, plus interest. As a result, it is possible to be vested and locked-in for some benefits and not for others.

*How does the 2% of YMPE commutation apply to locked-in money?*

Section 50 of the PBA provides that the terms of a pension plan may permit the payment of the commuted value of an annual pension payable at normal retirement date as a lump sum amount if that pension is less than 2% of the YMPE in the year of the plan member's

termination. This option must be exercised under the pension plan; it does not apply to money in locked-in accounts or to life annuities purchased with money transferred from a locked-in account. Section 50 is limited to the terms of a pension plan and there is no authority under the PBA or Regulation to permit a financial institution to apply such a provision to a locked-in account or annuity.

*What is the liability of the plan administrator once money is transferred to a locked-in account?*

Subsection 42(11) of the PBA discharges a plan administrator from any further responsibility for administering the pension or deferred pension entitlement of an individual when locked-in money is transferred to a financial institution. Financial institutions that receive locked-in money assume responsibility for administering the locked-in accounts in accordance with the relevant provisions of the PBA and Regulation.



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### **Introduction: The Locked-In Retirement Account**

Clause 42(1)(b) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 ("PBA") provides that a former member of a pension plan who, on or after January 1, 1988, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension, is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension into a prescribed retirement savings arrangement (referred to in this policy as a "locked-in account").

This policy will provide an overview of the main features and requirements of one such

locked-in account, the Locked-in Retirement Account ("LIRA"). For greater details regarding the rules which apply to all types of locked-in accounts, please refer to policy L200-100.

Effective June 24, 1994, Regulation 909, R.R.O. 1990 under the PBA ("Regulation") was amended to introduce the LIRA. The LIRA must satisfy the requirements of two statutes. To ensure that money in the LIRA is allowed to accrue on a tax-deferred basis, each LIRA must be established as a Registered Retirement Savings Plan ("RRSP") in accordance with the *Income Tax Act* (Canada) ("ITA"). In addition, to ensure that the money in the LIRA is preserved for retirement and provides a lifetime stream of income, each LIRA must comply with the "locking-in" requirements set out in the PBA and Regulation. Prior to the introduction of the LIRA, the pension industry referred to this type of locked-in account as a locked-in Registered Retirement Savings Plan (a "locked-in RRSP").



## The Contractual Requirements of the Ontario LIRA

Some Canadian jurisdictions require that specimen LIRA contracts be approved by their pension regulatory authority and maintain a list of financial institutions whose LIRA contracts have been approved. Ontario does not require that specimen contracts be submitted for approval and does not maintain such a list. Any financial institution may issue an Ontario LIRA as long as it complies with the requirements of the PBA and the ITA.

The key feature of LIRAs that distinguishes them from regular (non-locked-in) RRSPs is that no money may be withdrawn from LIRAs except in circumstances prescribed by Regulation: subsection 21(2)(a) of the Regulation which states that a contract to establish a LIRA shall provide that money in the account will not be withdrawn in whole or in part, except in the situations described below.<sup>1</sup>

### Transfers from a LIRA

Money in a LIRA, including any accrued interest and any other investment earnings, may only be transferred:

- to the pension fund of a subsequent employer's registered pension plan, if that plan is willing to accept the transfer and administer it in accordance with the PBA and Regulation;
- to another LIRA;
- to a Canadian insurance company for the purchase of an immediate or deferred life annuity;
- to a Life Income Fund ("LIF") or Locked-In Retirement Income Fund ("LRIF"); or
- for payment under the terms of the PBA and Regulation in situations of shortened life expectancy, specified LIRA amounts at age 55

or over, excess amounts held in the LIRA under the ITA, or in prescribed circumstances of financial hardship.

The Regulation requires that the LIRA contract provide that:

- the money in the LIRA will not be assigned, charged, anticipated or given as security (except pursuant to a court order or domestic agreement under the *Family Law Act*), and any transaction which does so is void;
- the money in the LIRA cannot be commuted, withdrawn or surrendered, in whole or in part (except as permitted under the PBA and Regulation), and any transaction that does so is void; and
- if money in the account is subsequently transferred, the transferee must agree to administer it as a pension or deferred pension (i.e., the money must remain locked-in) in accordance with the PBA and Regulation.

### Payment of a Death Benefit

The LIRA contract must provide that on the death of the owner, the financial institution which holds the LIRA will administer the money in accordance with section 48 of the PBA. This means that the owner's spouse or same-sex partner is entitled to receive a pension or a lump sum payment equal to the value of the LIRA on the date of death. However, this legislated entitlement does not apply if the spouse or same-sex partner had previously waived his or her entitlement to the death benefit, or if the owner and the spouse or same-sex partner were living separate and apart at the time of the owner's death. The intent is not to deny a spouse or same-sex partner who is living separate and apart any entitlement to a survivor benefit; a waiver simply revokes the legislated entitlement to the survivor benefit but does not prevent the owner from designating



the spouse or same-sex partner as a beneficiary. [Note: The use of the term "spouse" in this policy has the same meaning as "spouse" as defined in the PBA, which includes a common-law spouse. The term "same-sex partner" has the same meaning as "same-sex partner" as defined in the PBA.]

Where there is no spouse or same-sex partner, where there has been a waiver of entitlement, or where the spouse or same-sex partner are living separate and apart at the time of the owner's death, the death benefit would be paid to the owner's designated beneficiary or, if there is no beneficiary, to the owner's estate. The death benefit must be paid as an unlocked lump sum.

#### Assignment of Money in a LIRA on the Breakdown of a Marriage or Permanent Relationship

The LIRA contract must provide that money in a LIRA cannot be assigned, charged, anticipated or given as security except as permitted by subsection 65(3) of the PBA. On breakdown of the marriage or permanent relationship ("breakdown"), this exception permits the assignment, by an order under the *Family Law Act* or pursuant to a domestic contract as defined by Part IV of that *Act*, of an interest in the amount in a LIRA. Subsection 51(2) of the PBA provides that no more than 50% of the amount in the LIRA **may** be assigned to a former spouse or same-sex partner on breakdown.

Any portion of a LIRA that is assigned as a result of a court order on breakdown must continue to be administered as a pension or deferred pension. This means that the former spouse's or same-sex partner's share must be transferred to a locked-in account (LIRA, LIF or LRIF) or used to purchase a life annuity.

Money in a LIRA can be divided between the

owner and the former spouse or same-sex partner but payments to the former spouse or same-sex partner cannot commence until the earlier of the date on which the LIRA owner (the former member) begins to receive payments from his or her locked-in account or life annuity or when the former member reaches his or her normal retirement date (usually at 65). That is, the action or age of the former member determines when the former spouse or same-sex partner of the former member can begin to receive payment from his or her LIRA.

#### No Differentiation on the Basis of Sex

Subsection 21(4) of the Regulation requires that the contract for the LIRA contain a statement as to whether the initial amount transferred to the LIRA was determined in a manner that differentiated on the basis of sex. This information is required because if an annuity is eventually purchased using the money in the LIRA, the annuity cannot differentiate on the basis of the sex of the LIRA owner unless the initial transfer amount was determined on a sex distinct basis. Locked-in money that represents the value of the pension earned on or after January 1, 1987 must be determined on a basis that does not differentiate on the basis of sex.

#### **Applications for Withdrawal of Money from a LIRA for Shortened Life Expectancy**

Before March 3, 2000, LIRA owners whose life expectancy was shortened considerably by reason of mental or physical disability were allowed to receive money from their LIRA in cash only if the pension plan from which the money originated contained a provision allowing for the variation of payment due to the shortened life expectancy of that person. If the plan contained such a provision, the LIRA was deemed to include the provision. This



exception to the locking-in rules still applies, and if available, the LIRA owner is responsible for satisfying the financial institution administering the LIRA that his or her former plan contained such a provision and that, based on medical evidence, the owner's life expectancy has been considerably shortened. The financial institution should determine whether a variation in payment is appropriate in the circumstances (i.e., it meets the criteria for shortened life expectancy set out in the original plan).

As of March 3, 2000, the Regulation was amended to provide for shortened life expectancy withdrawals for all LIRA owners (and owners of LIFs and LRIFs), regardless of whether or not their former pension plans contained shortened life expectancy provisions. Any LIRA owner may now apply to the financial institution to withdraw some or all of the money in the account if he or she is suffering from an illness or physical disability that is likely to shorten his or her life expectancy to less than two years. The application must be made on a form approved by the Superintendent of Financial Services (Form 5), signed by the owner of the LIRA, and accompanied by the following documents:

- Physician's statement

A statement signed by a physician, who is licensed to practice medicine in Canada, that in his or her opinion, the owner has an illness or physical disability that is likely to shorten his or her life expectancy to less than two years. The physician may either fill in Part 5 of Form 5, or provide his or her opinion as to the owner's life expectancy in another written and signed format, such as a letter. If the physician does not fill in Part 5, the letter must include a statement that the physician is licensed to practice medicine in a jurisdiction in Canada.

- Consent of spouse or same sex partner

If the LIRA owner has a spouse or same-sex partner as of the date the application is signed, the spouse or same-sex partner must consent to the application before the money can be withdrawn. **The spouse or same-sex partner is not obligated to consent to the application.** If the spouse or same-sex partner agrees to consent, he or she must complete Part 4 of Form 5 in the presence of a witness (a person other than the LIRA owner).

Consent of a spouse or same-sex partner is not required if the LIRA owner and spouse or same-sex partner are living separate and apart, or if the money in the LIRA resulted from the pension benefit of someone other than the LIRA owner, such as the owner's former spouse or same-sex partner as a result of a breakdown between spouses or same-sex partners.

The completed application must be submitted to the financial institution which administers the LIRA within 60 days after the date on which it was signed by the owner and the spouse or same-sex partner, if applicable. Whether the application meets the requirements for withdrawal, including the adequacy of the physician's statement is determined by the financial institution. If the applicant qualifies for the withdrawal, the financial institution must pay the money within 30 days after it receives the completed application.

If the pension plan from which the money in the LIRA originated contained a variation of payment provision for shortened life expectancy, the LIRA owner has the choice of applying under the terms of the Regulation (and should use Form 5) **or** applying under the terms of the plan provisions and the LIRA contract (in which case, Form 5 does not apply). An example of a situation where the individual may



wish to apply under the pension plan provisions would be where the plan provided a more generous shortened life expectancy criteria (e.g., less than five years).

LIRA owners can only apply for the shortened life expectancy withdrawal under the rules described above if their LIRA is governed by the laws of Ontario. If the LIRA is governed by the laws of another province or the federal government, the shortened life expectancy relief described above is not applicable. If the owner is not sure, he or she should contact the administrator of the plan from which the pension originated or the financial institution administering the LIRA.

#### **Applications for Withdrawal of Money from a LIRA of a Specified Amount at Age 55 or Over ("Small Amounts")**

The locking-in rules present a problem when the amount in a LIRA is not sufficient to qualify for the purchase of a life annuity or when the amount is too small to purchase a LIF or LRIF. The problem is compounded when the owner reaches age 69, at which time the LIRA has to be de-registered under the ITA. The money then has to be transferred to a non-tax sheltered retirement vehicle but the locking-in provisions continue to apply.

Effective March 3, 2000, the owner of a LIRA may apply to withdraw all of the money in the LIRA if:

- The owner is at least 55 years old when he or she applies; and
- the value of all assets held in all of the owner's Ontario LIRAs, LIFs and LRIFs is less than 40% of the Year's Maximum Pensionable Earnings (YMPE) for the calendar year in which the application is made. (For the year 2002, this amount is 40% of \$39,100 (the YMPE for 2002) = \$15,640.)

The value of the assets held in each Ontario LIRA, LIF and LRIF must be based on the most recent statement given to the owner by the financial institution, and the statement must not be dated more than one year before the date the application is signed.

The application must be made on a form approved by the Superintendent of Financial Services (Form 5) and signed by the owner of the LIRA. If the LIRA owner has a spouse or same-sex partner as of the date the application is signed, the spouse or same-sex partner must consent to the application before the money can be withdrawn. **The spouse or same-sex partner is not obligated to consent to the application.** If the spouse or same-sex partner agrees to consent, he or she must complete Part 4 of Form 5 in the presence of a witness (someone other than the LIRA owner).

Consent of a spouse or same-sex partner is not required if the LIRA owner and spouse or same-sex partner are living separate and apart, or if the money in the LIRA resulted from the pension benefit of someone other than the LIRA owner, such as the owner's former spouse or same-sex partner as a result of a breakdown between spouses or same-sex partners.

The completed application must be submitted to the financial institution which administers the LIRA within 60 days after the date on which it was signed by the owner and the spouse or same-sex partner, if applicable. Whether the application meets the requirements for withdrawal is determined by the financial institution. If the applicant qualifies for the withdrawal, the financial institution must pay the money within 30 days after it receives the completed application.

LIRA owners can only apply for the small amount withdrawal under the rules described

above if their LIRA is governed by the laws of Ontario. If the LIRA is governed by the laws of another province or the federal government, these rules do not apply. If the owner is not sure, he or she should contact the administrator of the plan from which the pension originated or the financial institution administering the LIRA.

### **Applications for Withdrawal of Money from a LIRA for Amounts that Exceed ITA Limits**

The ITA imposes a limit on the amount that a former member may transfer from a registered pension plan to a locked-in account on a tax-deferred basis when a former member terminates employment or terminates membership in the plan. Amounts transferred that do not exceed the ITA limit can only be transferred to a locked-in account. Effective March 3, 2000, if the amount of the commuted value of an individual's deferred pension that is to be transferred to a locked-in account is greater than the amount allowed under the ITA for such a transfer, the administrator must pay the excess amount to the individual in a lump sum.

However, if an amount that exceeds the ITA limit has already been transferred to a LIRA, the owner may apply to the financial institution to withdraw in cash the excess amount and any subsequent investment earnings, including any unrealized capital gains or losses that are attributable to the excess amount, or to transfer that amount to a non-locked-in vehicle. It is up to the financial institution that administers the account to calculate the aggregate amount to be withdrawn.

The application must be made on a form approved by the Superintendent (Form 5) and must include a written statement from either the administrator of the owner's former pen-

sion plan or the Canadian Customs and Revenue Agency ("CCRA") that sets out the excess amount that was transferred into the LIRA. The consent of a spouse or same-sex partner is not necessary.

The completed application must be submitted to the financial institution which administers the LIRA within 60 days after the date on which it was signed by the owner. The financial institution is required to make payment to the owner within 30 days after receipt of the completed form and accompanying document.

### **Frequently Asked Questions about LIRAs**

*What is the earliest age on which payments from a life annuity purchased from a LIRA can begin?*

If the LIRA owner chooses to purchase a life annuity, he or she is not required to wait until age 65 to begin to receive payments. The first income payment under the annuity must not begin before the earlier of the earliest date on which the former member is entitled to receive pension benefits under the PBA (normally age 55) or the earliest date on which the former member is entitled to receive pension benefits under any pension plan from which the money was transferred.

*If money in a LIRA is used to purchase a LIF or LRIF, what are the earliest and latest dates that money can be transferred?*

The earliest age that an individual can purchase a LIF or LRIF is generally 55 but could be earlier depending upon the age at which members may receive a benefit under the terms of the pension plan from which the money originated. Payments from a LIF or a LRIF must begin no later than the end of the second fiscal year of the LIF or LRIF. Accordingly, the money in the LIRA can be transferred to the LIF or LRIF at age 54 or earlier if the plan so provides.



*Can funds in an Ontario LIRA be transferred to a RRIF?*

No. The proceeds from an Ontario LIRA must be used to provide either a life annuity, a LIF or a LRIF so that the owner will receive regular payments when his or her earnings have stopped. Since one can outlive a RRIF, transferring the money in a LIRA to a RRIF would not achieve this objective.

*Can money in an Ontario LIRA be transferred or combined with locked-in money from another jurisdiction?*

Because some of Ontario's statutory requirements differ from those of other Canadian pension jurisdictions, the contract for an Ontario LIRA will likely differ from the contract for a LIRA of another jurisdiction. Consequently, locked-in money that is required to be administered in accordance with the Ontario PBA may not be transferred to or combined with a locked-in account of another pension jurisdiction.

*Does the holding of an investment which is not redeemable before maturity restrict the date on which the owner of a LIRA may purchase a life annuity, LIF or LRIF with the money in the LIRA?*

Owners of LIRAs may purchase an annuity, LIF or LRIF before the expiry of the term of an investment at the discretion of the financial institution. Owners making investment decisions should be mindful that CCRA requires all RRSPs, including LIRAs, to be de-registered before age 69.

*Can money in a LIRA be released to fund the purchase of a home under the federal government's Home Buyers' Plan, introduced in 1992?*

No. In Ontario, monies in LIRAs cannot be loaned to buy a house to take advantage of the federal Home Buyers' Plan.



## SUPERINTENDENT OF FINANCIAL SERVICES

### Notices of Proposals to Make an Order

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c. 28, respecting the **Pension Plan for Employees of JPE Canada, Inc. who are members of C.A.W. Locals 1524 and 1987, Registration Number 694570;**

**TO: PricewaterhouseCoopers Inc.**  
Royal Trust Tower, Suite 3000  
Toronto Dominion Centre  
P.O. Box 82  
Toronto ON M5K 1G8

**Attention:** Ms. Lois J. Reyes  
**Administrator**

**AND TO: JPE Canada, Inc.**  
775 Technology Drive  
P.O. Box 660  
Peterborough ON K9J 6Z8

**Attention:** Mr. Robert Tock  
**Employer**

**AND TO: Grant Thornton LLP**  
The Royal Bank Plaza  
South Tower, 19th Floor  
200 Bay Street  
P.O. Box 55  
Toronto ON M5J 2P9

**Attention:** Ms. Andrea Orr  
**Trustee in Bankruptcy**

**AND TO: C.A.W. – Local 1524**  
654 Rogers Street  
Peterborough ON K9H 1Y2

**Attention:** Ms. Rose Forestall, President  
**C.A.W. – Local 1987**  
600 Wabanaki Drive  
Kitchener ON N2C 2K4

**Attention:** David Bailey, President  
**C.A.W. Canada**  
205 Placer Court  
North York ON M2H 3H9

**Attention:** Tom Murphy,  
National Representative  
**Union**

### NOTICE OF PROPOSAL TO MAKE A DECLARATION

#### **WHEREAS:**

1. The Pension Plan for Employees of JPE Canada, Inc. who are members of C.A.W. Locals 1524 and 1987, Registration No. 694570 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. as the administrator (the "Administrator") of the Plan on July 16, 1999; and
4. The Plan was wound up effective February 9, 1999;



**NOW THEREFORE TAKE NOTICE** that I propose to consider to make a declaration, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan at windup was estimated to be 44.32% with an estimated claim against the Guarantee Fund at windup of \$1,155,965.
2. The estimated claim against the Guarantee Fund at May 31, 2001 is \$1,464,740.
3. The employer, JPE Canada, Inc., made an assignment in bankruptcy on February 8, 1999.
4. The trustee in bankruptcy for JPE Canada, Inc. has advised the Administrator that there are no funds available from the estate of JPE Canada, Inc. to make payment to the Plan.
5. The purchaser of the assets of JPE Canada, Inc. did not provide a new registered pension plan nor did they continue or assume the Plan.
6. The Administrator is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 16th day of October, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario

<sup>1</sup>NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for the Hourly Employees of Usarco Limited, Registration Number 0597393 (previously C-15367)** (the "Pension Plan");

**TO:** **Ernst & Young Inc.**  
Ernst & Young Tower  
Toronto-Dominion Centre  
222 Bay Street  
P.O. Box 251  
Toronto ON M5K 1J7

**Attention:** Mr. Brian Denega  
Senior Vice-President  
**Administrator of the Pension Plan for the Hourly Employees of Usarco Limited**

**AND TO:** **Usarco Limited**  
363 Wellington Street North  
Hamilton ON L8L 5B2  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
(formerly Coopers & Lybrand)  
Commerce Court West, Suite 3300  
Station Commerce Court  
P.O. Box 31  
Toronto ON M5L 1B2

**Attention:** Roxanne Anderson  
Receiver and Manager  
**Usarco Limited**

## **NOTICE OF PROPOSAL TO MAKE A DECLARATION**

### **WHEREAS:**

1. The Pension Plan for the Hourly Employees of Usarco Limited, Registration No. 0597393 (previously C-15367) (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective July 31, 1990; and
4. The Superintendent of Pensions appointed Ernst & Young Inc. as the administrator (the "Administrator") of the Pension Plan on September 13, 1990.

**NOW THEREFORE TAKE NOTICE** I propose to consider to make a declaration, pursuant to section 83 of the Act, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement Report to the Revised Actuarial Report filed by the Administrator indicates an estimated funding deficiency of \$1,713,600 as at December 31, 2000.
2. PricewaterhouseCoopers Inc. was appointed Receiver and Manager of Usarco Limited on October 11, 1990.
3. The Administrator has advised that they were successful in collecting \$509,558.24 of unpaid contributions from the Receiver and Manager for the Pension Plan and are of the opinion that there are no further funds



expected from the Receiver and Manager or from any other known sources.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 31st day of October, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario

<sup>1</sup>NOTE - PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "*Act*");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of Technical Service Council, Registration Number 0313452**;

**TO:** **Deloitte & Touche Inc.**  
c/o Morneau Sobeco Inc.  
1500 Don Mills Road, Suite 500  
Toronto ON M3B 3K4

**Attention:** B. Bethune A. Whiston  
Principal  
**Applicant**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment out of the Pension Plan for Employees of Technical Service Council, Registration No. 0313452 (the "*Plan*"), to Deloitte & Touche Inc., Trustee in Bankruptcy for the Estate of Technical Service Council, in the amount of \$277,882 as at January 31, 2001, plus investment earnings thereon to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that the payment of the members' share of the negotiated surplus has been made.

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. The Applicant is the Trustee in Bankruptcy of Technical Service Council (the employer as defined in the Plan).
2. The Plan was wound up, effective July 15, 1994.

3. As at January 31, 2001, the surplus in the Plan was estimated at \$635,885.
4. The Plan provides for payment of surplus to the Employer on the windup of the Plan.
5. The application discloses that by written agreement made by the Applicant, and 92% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of windup expenses is to be distributed:
  - a) 43.7% to the Applicant; and
  - b) 56.3% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 43.7% of the surplus as at January 31, 2001, plus investment earnings to the date of payment.
7. The application appears to comply with section 78 and subsection 79(3) (a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 2nd day of November, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario  
cc: Paul Macphail  
PricewaterhouseCoopers Inc.

<sup>1</sup>NOTE - PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended, in  
respect of the **Retirement Plan Sponsored  
by Diversified International Products  
Ltd. for Bruce McLarty, Registration  
Number 1022482**;

**TO:** **William M. Mercer Limited**  
BCE Place  
161 Bay Street  
P.O. Box 501  
Toronto ON M5J 2S5

**Attention:** William K. Simon  
**Administrator**

**AND TO:** **Diversified International  
Products Ltd.**  
66 West Wilmot Street  
Richmond Hill ON L4B 1H8

**Attention:** Bruce McLarty, President  
**Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in  
respect of the Retirement Plan Sponsored by  
Diversified International Products Ltd. for  
Bruce McLarty under subsection 69(1) of the  
*Pension Benefits Act*, R.S.O. 1990, c. P.8, as  
amended (the "Act").

#### **PROPOSED ORDER:**

The Retirement Plan Sponsored by Diversified  
International Products Ltd. for Bruce McLarty,  
Registration No. 1022482 (the "Plan"), be  
wound up in whole effective February 19, 1999.

#### **REASONS FOR THE ORDER:**

1. There was a cessation or suspension of  
employer contributions to the pension  
fund, pursuant to clause 69(1)(a) of the *Act*.
2. The employer failed to make contributions  
to the pension fund as required by the *Act*  
or the regulations, pursuant to clause  
69(1)(b) of the *Act*.
3. The employer is bankrupt within the mean-  
ing of the *Bankruptcy and Insolvency Act*  
(Canada), R.S.C. 1985, c. B-3, as amended,  
pursuant to clause 69(1)(c) of the *Act*.
4. A significant number of members of the  
Plan ceased to be employed by the employ-  
er as a result of the discontinuance of all or  
part of the business of the employer or as a  
result of the reorganization of the business  
of the employer, pursuant to clause 69(1)(d)  
of the *Act*.
5. All or a significant portion of the business  
carried on by the employer at a specific  
location was discontinued, pursuant to  
clause 69(1)(e) of the *Act*.
6. Such further reasons as may come to my  
attention.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "Tribunal"),  
pursuant to subsection 89(6) of the *Act*, if,  
within thirty (30) days after this Notice of  
Proposal is served on you, you deliver to the  
Tribunal a written notice that you require a  
hearing.<sup>1</sup>

Any notice requiring a hearing shall be  
delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED,** pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to the following persons:

**BDO Dunwoody LLP**

Royal Bank Plaza  
200 Bay Street, 32nd Floor  
P.O. Box 33  
Toronto ON M5J 2J9

**Attention:** D. R. McConnell  
Vice President

**Trustee in Bankruptcy and  
Receiver and Manager for  
Diversified International  
Products Ltd.**

DATED at North York, Ontario, this 13th day of November, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario

\*NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of Beatrice Foods, Inc., Registration Number 279430**;

**TO:** **Parmalat Dairy & Bakery, Inc.**

405 The West Mall  
Etobicoke ON M9C 5J1

**Attention:** Mr. John Dalton  
Vice President, Compensation & Benefits  
**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment out of the Pension Plan for Employees of Beatrice Foods, Inc., Registration No. 279430 (the "Plan"), to Parmalat Dairy & Bakery, Inc. in the amount of \$611,900 as at April 24, 1999, adjusted as to reflect investment earnings and losses, other actuarial gains and losses, and expenses.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits and any other payment to which members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Parmalat Dairy & Bakery, Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective April 24, 1999.
3. As at April 24, 1999, the surplus in the Plan was estimated at \$611,900.
4. The Plan provides for payment of surplus to the Employer on the windup of the Plan.
5. The application discloses that by written agreement made by the Employer, the Union and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of windup expenses is to be distributed in the amount of 100% to the Employer.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan adjusted to reflect investment earnings and losses, other actuarial gains and losses, and expenses thereon to the date of payment.
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 29th day of November, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario  
cc: Rita Vassallo, Watson Wyatt Canada

<sup>1</sup>NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Ilford Anitec (Canada) Ltd. Plan B Employees' Pension Plan, Registration Number 481218;**

**TO:** **Kodak Polychrome Graphics LLC**  
401 Merrit 7  
Norwalk CT 06851

**Attention:** Mr. John B. Wooley  
Director of Human Resources  
**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment out of the Ilford Anitec (Canada) Ltd. Plan B Employees' Pension Plan, Registration No. 481218 (the "Plan"), to Kodak Polychrome Graphics LLC in the amount of \$164,850 as of December 31, 1998, subject to adjustment for investment earnings or losses and expenses, to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits and benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) among members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Kodak Polychrome Graphics LLC is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 31, 1998.
3. As at December 31, 1998, the surplus in the Plan was estimated at \$329,700.
4. The Plan provides for payment of surplus to the Employer on the windup of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of windup expenses is to be distributed:
  - a) 50% to the Employer; and
  - b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding investment earnings and deducting expenses related to the windup of the Plan).
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.



8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 5th day of December, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario  
cc: Mr. Robert G. Coyle

<sup>1</sup>NOTE - PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited, Registration Number 0582668 (previously C-14740)** (the "Pension Plan");

**TO:** **Deloitte & Touche Inc.**  
c/o Morneau Sobeco  
1500 Don Mills Road, Suite 500  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Administrator of the Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited**

**AND TO:** **Bakelite Thermosets Limited**  
621 Dundas Street East  
Belleville ON K8N 5C5

**Attention:** K.W. Whitney  
Treasurer  
**Employer**

## **NOTICE OF PROPOSAL TO MAKE A DECLARATION**

### **WHEREAS:**

1. The Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited, Registration No. 0582668 (previously C-14740) (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective March 31, 1990 by the Employer; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on March 20, 1997.

**NOW THEREFORE TAKE NOTICE** I propose to consider to make a declaration, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Addendum to the Supplemental Actuarial Report filed by the Administrator indicates an estimated claim against the Guarantee Fund of \$121,000 as at December 31, 2001.
2. The place of business of the Employer is closed.
3. The Administrator has advised that since the Employer is no longer in business, there are no further funds expected from the Employer or from any other sources for the Pension Plan.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 13th day of December, 2001.

K. David Gordon

Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario

<sup>1</sup>NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "*Act*");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order under section 69 of the *Act*, in respect  
of the **Employee Retirement Plan for the  
Employees of Bestway Truck Centre  
Division of 604888 Ontario Inc.,  
Registration Number 0958942;**

**TO:** **London Life Insurance  
Company**  
Group Retirement Services  
255 Dufferin Avenue  
London ON N6A 4K1

**Attention:** Nancy Galpin, Windup Specialist  
**Aministrator of the Plan**

**AND TO:** **Bestway Truck Centre  
Division of 604888  
Ontario Inc.**  
North Bay Stn. Main  
Highway 11s at Fisher Street  
P.O. Box 1170  
North Bay ON P1B 8K4

**Attention:** Peter Woodgate, Office Manager  
**Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in  
respect of the Employee Retirement Plan for  
the Employees of Bestway Truck Centre  
Division of 604888 Ontario Inc., Registration  
No. 0958942, under subsection 69(1) of the *Act*.

### **PROPOSED ORDER:**

I order that the Employee Retirement Plan for  
the Employees of Bestway Truck Centre  
Division of 604888 Ontario Inc., Registration  
No. 0958942, be wound up in whole effective  
March 1, 2000.

### **REASONS FOR THE ORDER:**

1. There was a cessation or suspension of  
employer contributions to the pension  
fund, pursuant to clause 69(1)(a) of the *Act*.
2. Such further reasons as may come to my  
attention.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "*Tribunal*"),  
pursuant to subsection 89(6) of the *Act*, if,  
within thirty (30) days after this Notice of  
Proposal is served on you, you deliver to the  
Tribunal a written notice that you require a  
hearing.<sup>1</sup>

Any written notice requiring a hearing shall be  
delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York ON M2N 6L9  
**Attention:** The Registrar

<sup>1</sup>NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED,** pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to the following persons:

**PricewaterhouseCoopers Inc.**

5700 Yonge St., Suite 1900  
North York ON M2M 4K7

**Attention:** David Filice

Vice President

**Receiver and Manager for  
Bestway Truck Centre  
Division of 604888 Ontario  
Inc.**

**A. Farber & Partners Inc.**

1200 Sheppard Ave. East  
North York ON M2K 2R8

**Attention:** Avron Mintz

**Trustee in Bankruptcy for  
Bestway Truck Centre  
Division of 604888 Ontario  
Inc.**

DATED at North York, Ontario, this 21st day of December, 2001.

K. David Gordon

Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "*Act*");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order under section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Retirement Plan for the  
Employees of Alloy Wheels International  
(Canada) Ltd., Registration Number  
1036029**;

**TO:** **Arthur Andersen LLP**  
4 King Street West, Suite 1050  
Toronto ON M5H 1B6

**Attention:** Lawrence A. Contant  
Manager  
**Administrator**

**AND TO:** **Alloy Wheels International  
(Canada) Ltd.**  
49 Truman Road  
P.O. Box 13000  
Barrie ON L4M 6E7

**Attention:** Joan Oickle  
Compensation and Benefits  
Coordinator  
**Employer**

## **NOTICE OF PROPOSAL**

**I PROPOSE TO ORDER** in respect of the  
Retirement Plan for the Employees of Alloy  
Wheels International (Canada) Ltd.,  
Registration No. 1036029 (the "*Plan*"),  
under section 69 of the *Act*.

### **PROPOSED ORDER:**

An order that the Plan be wound up in whole  
effective January 19, 2001.

### **REASONS FOR THE ORDER:**

1. There was a cessation or suspension of employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the *Act*.
2. Alloy Wheels International (the "Employer") failed to make contributions to the pension fund as required by the *Act* or the regulations within the meaning of clause 69(1)(b) of the *Act*.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*, R.S. 1985, c.B-3, as amended as set out in clause 69(1)(c) of the *Act*.
4. A significant number of members of the Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer, within the meaning of clause 69(1)(d) of the *Act*.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, within the meaning of clause 69(1)(e) of the *Act*.
6. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "*Tribunal*"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

<sup>1</sup>NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED,** pursuant to subsection 89(2, 3, etc.), to transmit a copy of this Notice of Proposal to the following persons:

**Deloitte & Touche LLP**  
BCE Place  
181 Bay Street, Suite 1400  
Toronto ON M5J 2V1

**Attention:** David Murray  
Partner

**Trustee in Bankruptcy for Alloy Wheels International (Canada) Ltd.**

DATED at North York, Ontario, this 24th day of January, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario

cc: **CAW Canada - Local 1991**  
178 Dunlop Street  
Barrie ON L4M 4S6

**Attention:** Ed Little  
President  
**Skill Trades Representative**

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under section 87 of the *Act* respecting a request by Mr. Marcel Brousseau relating to the **Electrical Industry of Ottawa Pension Plan, Registration Number 0586396** (the "Plan");

**TO:** **Marcel Brousseau**  
222 Monfort Street  
Vanier ON K1L 5P4

## **NOTICE OF PROPOSAL**

**I PROPOSE TO REFUSE TO MAKE AN ORDER** in respect of the Plan administrator's determination of Mr. Brousseau's pensionable service under the terms of the Plan, pursuant to section 87 of the *Act*.

### **REASONS:**

1. Marcel Brousseau is a member of the Plan.
2. The Plan is a multi-employer pension plan administered by the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Trustees"). It covers members of the International Brotherhood of Electrical Workers, Local 586 ("IBEW, Local 586").
3. Mr. Brousseau has been a member of IBEW, Local 586, since 1964.
4. Mr. Brousseau worked for a participating employer of the Plan from January 1, 1974 to the present, except during a twenty-two month period between November 1983 and August 1985, when he was on temporary lay-off.
5. While he was laid off, Mr. Brousseau worked for Metcalfe Realty, an employer

who did not participate in the Plan. Mr. Brousseau maintained his membership in IBEW, Local 586, throughout this period.

6. The Trustees refused to credit Mr. Brousseau with service during the lay-off period. Mr. Brousseau does not agree that a break in service has occurred, and requests that the Superintendent of Financial Services (the "Superintendent"), issue an order that he receive credit for continuous service.
7. Mr. Brousseau claims a pension based on continuous service and refers to the provisions of Article XI of the 1998 Constitution of the International Brotherhood of Electrical Workers.
8. The Constitution governs the international union and the pension plan administered and provided by the international union to its employees. It does not govern the provision of benefits under pension plans created and administered by local unions.
9. The Trustees based their decision on Article IV of the Welfare Plan and Declaration of Trust document (the Plan "Declaration of Trust"), made October 1, 1962 and revised September 1, 1977. This provides:  
Insurance Coverage During Unemployment  
If the employment of an Employee is terminated by the *Act* of a contractor and while such Employee is a member of the Local, all insurance benefits hereunder shall be continued in force by the Trustees for a period of ninety days after cessation of such employment or longer at the discretion of the Trustees. Employees must be ready, willing and able to work in the electrical industry to remain eligible for the insurance benefits under the Plan.



10. Article V of the Declaration of Trust provides at subparagraph 4:

Authority of the Trustees: Subject to the stated purposes of the Plan and the provisions of this Agreement the Trustees shall have full authority to determine all questions of coverage and eligibility. They shall have the power to construe the provisions of this agreement and the terms used herein. Any such determination or such construction adopted in good faith shall be binding upon all parties and beneficiaries hereto.

11. The Plan text, in effect as of January 1, 1985, provides at section 1(j):  
"ELIGIBLE SERVICE" means the period of an Employee's employment commencing with the Employee's Entry Date, and ending with the termination of his employment by ... retirement, by withdrawal from service or by death. Any ... leave of absence for which remuneration is not received shall not be Eligible Service for the purpose of this Plan.
12. The Plan text provides at section 3:  
For the purposes of this Plan, matters as to the continuity of Eligible Service of a Participant who has been re-employed by a participating employer shall be determined solely by the Trustees.  
Without limiting the generality of the foregoing, where a Participant who has terminated his participation in the Plan and becomes entitled to a vested paid-up deferred annuity as provided in Section 9 of the Plan subsequently again becomes an eligible Participant in the Plan he shall be created as a new Participant for purposes of future pension benefit accruals except that the period of Eligible Service on which his

vested paid-up deferred annuity was based shall be recognized for the purposes of establishing his eligibility for future vesting under the Plan. ...

13. Section 9 of the Plan text provides, in part:  
A participant whose service with a participating employer or whose membership in Local 586 of the International Brotherhood of Electrical Workers terminates for reasons other than his death or retirement shall be entitled to receive a paid-up deferred annuity ...
14. Section 16 of the Plan text provides, in part:  
All matters relating to the administration or operation of the Plan shall be determined solely by the Trustees including, and without limiting the generality of the foregoing, matters as to Eligible Service and Eligibility. ...
15. In applying the provisions of the 1985 Plan text and 1977 Declaration of Trust to Mr. Brousseau's situation, the Trustees have administered the Plan in compliance with requirements of the *Act*, the regulations, and the filed documents in respect of which the Superintendent has issued a certificate of registration.
16. Subsection 87(2) of the *Act* allows the Superintendent to make an Order only if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the regulations or the pension plan.
17. Such further reasons as may come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at North York, Ontario, this 24th day of January, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario

<sup>1</sup>NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



## Orders that Pension Plans be Wound Up

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order, pursuant to section 69 of the *Act*, respecting the **Pension Plan for**

**Executives of William H. Kaufman Inc., Registration Number 999631** (the "Plan");

**TO:           The Standard Life Assurance Company**  
1245 Sherbrooke Street West  
Montreal PQ H3G 1G3

**Attention:** Jean-Claude Lebel  
Pension Actuary  
**Administrator**

**AND TO:   William H. Kaufman Inc.**  
Kitchener Stn. C  
410 King St. West  
P.O. Box 9005  
Kitchener ON N2G 4J8

**Attention:** Stuart Snyder  
Secretary Treasurer  
**Employer**

### ORDER

**ON** the 17th day of August 2001, the Superintendent of Financial Services issued to William H. Kaufman Inc. (the "Employer") and to Standard Life Assurance Company, the administrator of the Plan (the "Administrator"), pursuant to section 69(1) of the *Act*, a Notice of Proposal to Make an Order that the Plan be wholly wound up effective July 21, 2000.

**NO REQUEST** for a hearing from the Employer or from the Administrator has been received by the Financial Services Tribunal in connection with this matter.

**IT IS THEREFORE ORDERED** that the Pension Plan for Executives of William H. Kaufman Inc., Registration No. 999631, be wholly wound up effective July 21, 2000.

**THE REASONS** for this order are:

1. There was a cessation or suspension of Employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the *Act*.
2. The Employer failed to make contributions to the pension fund as required by the *Act* or the regulations within the meaning of clause 69(1)(b) of the *Act*.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R. S. C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the *Act*.
4. A significant number of members of the Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer within the meaning of clause 69(1)(d) of the *Act*.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the *Act*.

**THE ADMINISTRATOR IS REQUIRED**

pursuant to section 69(2) of the *Act*, to give notice of this Order to the following persons:

**Ernst & Young Inc.**

Toronto-Dominion Centre  
222 Bay Street  
P.O. Box 251  
Toronto ON M5K 1J7

**Attention:** Philip Kan

**Interim Receiver and  
Receiver and Trustee in  
Bankruptcy for  
William H. Kaufman Inc.**

DATED at North York, Ontario, this 14th day of November, 2001.

Tom Golfetto

Director, Pension Plans Branch (A)

By Delegated Authority from

K. David Gordon,

Deputy Superintendent, Pension Division .

Financial Services Commission of Ontario



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8 (the "*Act*"), as amended;

**AND IN THE MATTER OF** an Amendment  
effective January 1, 2000, to the **Pension Plan  
for Employees of Engel Canada Inc.,  
Registration Number 446393;**

**TO:** **Engel Canada Inc.**  
545 Elmira Road  
Guelph ON N1K 1C2

**Attention:** Mr. Bill Rowe  
Human Resources Manager  
**Administrator and Employer**

### **ORDER**

**ON** August 3, 2001, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Refuse to Register an Amendment (the "Notice of Proposal") to the Employer and Administrator of Pension Plan for Employees of Engel Canada Inc., Registration No. 446393 (the "Plan"), pursuant to section 18 of the *Act*, that the request to register Amendment Number 4 to the Plan, effective January 1, 2000 (the "Amendment"), be refused.

**NO REQUEST** for a hearing has been received by the Financial Services Tribunal in connection with this matter.

**I THEREFORE ORDER** that the request to register the Amendment be refused.

### **REASONS:**

1. The Plan is a defined contribution pension plan. On or about September 29, 1999, the Board of Directors for the Employer passed a resolution approving Amendment Number 4 to the Plan (the "Amendment") effective January 1, 2000. The Amendment modifies the Plan to eliminate required employee contributions and institutes employer contributions calculated on the basis of the amount of employee contributions to a separate Group Registered Retirement Savings Plan. In addition, the Amendment purports to reclassify all required member contributions made prior to January 1, 2000, as voluntary contributions.
2. Subsection 18(1)(d) of the *Act* permits the Superintendent to refuse to register an amendment "if the amendment is void or if the pension plan with the amendment would cease to comply with this *Act* and the regulations."
3. Subsection 63(1) of the *Act* states that no member or former member is entitled to a refund of contributions from a pension plan. However, subsection 63(2) specifically permits the refund of additional voluntary contributions. Notwithstanding subsection 63(1), subsection 63(7) states that contributions may be refunded with the consent of the Superintendent. Subsection 63(8) states that such consent may be provided if the pension plan provides for the refund "and the employer has assumed responsibility for funding all pension benefits associated with the contributions."
4. The Financial Services Commission of Ontario (FSCO) Policy R400-101, entitled "Application for Refund to Plan Members or Former Members," states that where a plan has been amended to deem required contributions to be additional voluntary contributions, the requirements of subsection 63(8) will apply.
5. Required contributions that are subsequently deemed to be additional voluntary contributions through an amendment to the plan are not additional voluntary contributions within the meaning of the



*Act*. Section 1 defines additional voluntary contributions as contributions to the pension plan beyond any amount that the member is required to contribute and does not include a contribution in relation to which the employer is required to make a concurrent additional contribution to the pension fund. The contributions that are the subject of the Amendment were required contributions under section 4 of the Plan at the time that they were made. In addition, the Employer's contribution, under section 4 of the Plan, was calculated as a prescribed percentage of the employee's contribution and therefore is a contribution in relation to which the Employer was required to make a concurrent additional contribution. As such, subsection 63(2) of the *Act* does not apply to the Amendment and the provisions of subsection 63(8) are applicable.

6. The Employer takes the position that it will not assume responsibility for funding all pension benefits associated with the deemed additional voluntary contributions. The Amendment, therefore, does not comply with subsection 63(8) of the *Act*. I therefore propose to refuse to register the Amendment under subsection 18(1)(d) of the *Act* because the Plan with the Amendment would cease to comply with the *Act*, specifically section 63 of the *Act*.
7. Such further and other reasons as may come to my attention.

DATED at North York, Ontario, this 14th day of December, 2001.

Tom Golfetto  
Director, Pension Plans Branch (A)  
By Delegated Authority from  
Superintendent of Financial Services  
Financial Services Commission of Ontario

cc:

**Ian Bedford, Wayne Cavasin,  
Joe Kuzel, John Ness and Bill  
Rowe**

545 Elmira Road  
Guelph ON N1K 1C2

**Engel Canada Pension  
Committee Members  
Robertson Eadie & Associates**  
407 Speers Road, Suite 211  
Oakville ON L6K 3T5

**Attention:** Mr. Stephen Eadie  
**Actuary for the  
Administrator and Employer**



## Consents to Payment of Surplus out of Wound Up Pension Plans

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Ebasco Services of Canada Ltd. Salaried Employees Retirement Plan, Registration Number 0546093;**

**TO:** **Ebasco Services of Canada Ltd.**  
c/o TXU Gas Company  
1601 Bryan Street  
Dallas, TX  
75201-3411

**Attention:** John F. Stephens, Jr.  
Assistant Secretary of TXU Gas Company  
**Applicant and Employer**

### CONSENT

**ON** or about August 27, 2001, the Superintendent of Financial Services caused to be served on Ebasco Services of Canada Ltd. a Notice of Proposal dated August 20, 2001. The Superintendent proposed, pursuant to subsection 78(1) of the *Act*, to consent to payment to Ebasco Services of Canada Ltd., out of the Ebasco Services of Canada Ltd. Salaried Employees Retirement Plan, Registration No. 0546093 (the "Plan"), in the amount of \$161,090 plus investment earnings minus expenses incurred thereon to the date of payment.

**NO NOTICE** requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or by any other party, within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Plan of \$161,090 plus investment earnings minus expenses incurred thereon to Ebasco Services of Canada Ltd.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies the Superintendent that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for. DATED at North York, Ontario, this 31st day of October, 2001.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario

cc: Mr. Jeff Chuchman  
Financial Services Commission  
of Ontario

Mr. Duncan B. Richardson  
William M. Mercer Limited

Mr. Naso S. Janovsky  
1233 Scottsburg Cres.  
Mississauga ON L4W 2Z9

Mr. C.W. So  
23 Kerbar Road  
Scarborough ON M1V 1G2

Mr. Ronald C. Chambers  
6 Willowgate Drive  
Markham ON L3P 1G2



Mr. Maurice Titmuss  
6233 191A Street  
Surrey BC V3S 8C6  
Mr. Gerald P. Barron  
67 Dewlane Drive  
Willowdale ON M2R 2P9  
Mr. Robert Rollinson-Lorimer  
566 Hawthorne Cres.  
Milton ON M9T 4N8  
Mr. Bharat Mohan Kukreti  
88 Harvest Moon Drive  
Markham ON L3R 4L6  
Mr. R. Mitchell  
4044 Powderhorn Court  
Mississauga ON L5L 3C4  
Mr. Basil W. Pearce  
1800-55 Kingsbridge  
Garden Circle  
Unit 53  
Mississauga ON L5R 1Y1  
Mr. Ronaldo V. Olay  
1492 Islington Avenue  
Etobicoke ON M9A 3L5  
Mr. W. Milczyn  
513-2313 Lakeshore Blvd. W.  
Toronto ON M8V 1A8  
Mr. Patrick Kam  
69 Canlish Road  
Scarborough ON M1P 1S6  
Mr. Michael M. Salamon  
256 Armour Blvd.  
North York ON M3H 1N3  
Mr. Miguel Hortiguella  
331 Trudelle Street  
Scarborough ON M1J 3J9  
Mr. Robert Cudden  
43 Tremont Crescent  
Don Mills ON M3B 2R9

Mr. Pinaki Ranjan Roy  
77 Howard Street  
Apartment 905  
Toronto ON M4X 1J9  
Mr. George Poulos  
369 Ellis Park Road  
Toronto ON M6S 2V7



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Consolidated Pension Plans for Employees of Reichhold Limited, Registration Number 374454;**

**TO:** **Reichhold Limited**  
c/o Reichhold, Inc.  
Research Triangle Park  
P.O. Box 13582  
Raleigh Durham, North Carolina  
27709-3582  
U.S.A.

**Attention:** Trent Rhyne  
Compensation and Benefits  
Director  
**Applicant and Employer**

### CONSENT

**ON** or about October 10, 2001, the Superintendent of Financial Services caused to be served on Reichhold Limited a Notice of Proposal dated October 10, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Consolidated Pension Plans for Employees of Reichhold Ltd., Registration No. 374454 (the "Plan"), to Reichhold Ltd. as follows:

- a) an amount shall be paid or allocated to the Applicant equal to:
  - i) \$1,353,567, the value of the liabilities as determined by the Plan Actuary in consultation with the actuary for the Plan members for early retirement benefits as

negotiated and grow-in benefits required to be provided under the *Pension Benefits Act*, R.S.O. 1990, for Ontario members, which pursuant to the Surplus Sharing Settlement Agreement shall be provided to all eligible employees of the Applicant accruing benefits under the Plan at any time in the period from November 13, 1998 through the Plan windup date (April 30, 2000) regardless of jurisdiction of residence or employment and grow-in benefits as negotiated by the collective bargaining agents together with interest thereon from the date as at which each value is determined to the date of payment or allocation to the Applicant at the rates of interest used to determine the liability as follows:

<b>Interest Rate</b>	<b>Value of Liabilities</b>
6.5% per annum	\$ 785,014
5.0% per annum	279,023
5.75% per annum	289,530
<b>Total</b>	<b>\$1,353,567</b>
plus	

- ii) \$7.25 million as at April 30, 2000 together with interest thereon at the rate of 6.5%, being the rate of return used to determine the Plan's liability for transfer values as determined by the Actuary from April 30, 2000, to the date of payment; plus
- iii) 50% of the surplus remaining after making provisions for the payments contemplated in (i) and (ii) above together with net earnings or losses thereon (estimated to be, as at April 30, 2000, \$10,580,154).



**NO NOTICE** requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Consolidated Pension Plans for Employees of Reichhold Limited, Registration No. 374454, to Reichhold Limited of the amounts under (a)(i), (ii) and (iii) above.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that the basic benefit entitlements of all member and former members have been annuitized, paid out or otherwise provided for.

DATED at North York, Ontario, this 28th day of November, 2001.

Tom Golfetto  
Director, Pension Plans Branch (Acting)  
By Delegated Authority from  
Superintendent of Financial Services  
Financial Services Commission of Ontario  
cc: Kim Ozubko  
Blake, Cassels & Graydon LLP



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of The Tarmac Canada Incorporated **Pension Plan for Employees of Tarmac Minerals Canada Who Were Members of the Former Harnden & King Construction (Ontario) Limited Pension Plan, Registration Number 255091;**

**TO:** **Tarmac Canada Inc.**  
80 North Queen St.  
Toronto ON M8Z 5Z6

**Attention:** Mr. Randy Roe  
Vice-President, Finance  
**Applicant and Employer**

### **CONSENT**

**ON** or about October 10, 2001, the Superintendent of Financial Services caused to be served on Tarmac Canada Inc. a Notice of Proposal dated October 5, 2001 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of The Tarmac Canada Inc. Pension Plan for Employees of Tarmac Minerals Canada Who Were Members of the Former Harnden & King Construction (Ontario) Limited Pension Plan, Registration No. 255091 (the "Plan"), to Tarmac Canada Inc. in the amount of \$70,957 as at December 15, 1997, less 50% of the expenses, plus 50% of the investment earnings to the date of payment.

**NO NOTICE** requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of The Tarmac Canada Inc. Pension Plan for Employees of Tarmac Minerals Canada Who Were Members of the Former Harnden & King Construction (Ontario) Limited Pension Plan, Registration No. 255091, to Tarmac Canada Inc. in the amount of \$70,957 as at December 15, 1997, less 50% of the expenses, plus 50% of the investment earnings to the date of payment.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that the entitlements of all members, former members and other sharing persons have been settled. DATED at North York, Ontario, this 28th day of November, 2001.

Tom Golfetto  
Director, Pension Plans Branch (A)  
By Delegated Authority from  
Superintendent of Financial Services  
Financial Services Commission of Ontario  
cc: Doug Andrews, Aon Consulting Inc.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Procter & Gamble Core Pension Plan, Registration Number 681163**;

**TO:** **Mr. Peter Beca, F.C.I.A.**  
Senior Vice President  
Aon Consulting Inc.  
145 Wellington Street West,  
Suite 500  
Toronto ON M5J 1H8  
**for Procter & Gamble Inc.**  
P.O. Box 355, Station "A"  
Toronto ON M5W 1C5

**Attention:** Mr. David J. McKenzie,  
Associate Director, Human  
Resources  
**Applicant and Employer**

### CONSENT

**ON** or about October 12, 2001, the Superintendent of Financial Services caused to be served on Procter & Gamble Inc. a Notice of Proposal dated October 11, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Procter & Gamble Core Pension Plan, Registration No. 681163 (the "Plan"), to Procter & Gamble Inc. in the amount of approximately \$836,800 as at January 31, 1999, adjusted for all fees and expenses attributable to the partial windup effective January 29, 1999, resulting from the closure of the Hamilton plant, plus investment earnings to date of payment on all of the surplus attributable to said partial windup.

**NO NOTICE** requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Procter & Gamble Core Pension Plan, Registration No. 681163, of approximately \$836,800 as at January 31, 1999, adjusted for fees and expenses attributable to the partial windup effective January 29, 1999, plus investment earnings to date of payment on all of the surplus attributable to said partial windup to Procter & Gamble Inc.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that the administrator of the Plan has provided for the payment of all liabilities of the Plan, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the termination of the Plan.

DATED at North York, Ontario, this 4th day of December, 2001.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from  
Superintendent of Financial Services  
Financial Services Commission of Ontario  
cc: Mr. David J. McKenzie  
Procter & Gamble Inc.  
Mr. Paul W. Litner  
Osler, Hoskin & Harcourt LLP



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Staff Pension Plan for the Employees of 733907 Ontario Ltd., Registration Number 597245;**

**TO:** **733907 Ontario Ltd.**  
14 Westwin Court  
Brampton ON L6T 4T5

**Attention:** Mr. Morris Leider  
President

**Applicant and Employer**

adjusted for expenses plus investment earnings thereon to the date of the payment, to 733907 Ontario Ltd.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that the sole member's entitlement from the plan surplus has been transferred out of the Plan and paid to the member.

DATED at North York, Ontario, this 18th day of December, 2001.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from  
Superintendent of Financial Services  
Financial Services Commission of Ontario

cc: Timothy B. Lawrence  
F.S.A., F.C.I.A., Wright, Mogg & Associates  
Limited

### CONSENT

**ON** or about October 15, 2001, the Superintendent of Financial Services caused to be served on 733907 Ontario Ltd., a Notice of Proposal dated October 11, 2001, to consent pursuant to subsection 78(1) of the *Act*, to payment out of the Staff Pension Plan for the Employees of 733907 Ontario Ltd., Registration No. 597245 (the "Plan"), to 733907 Ontario Ltd. in the amount of \$25,405.78 as at July 31, 2000, adjusted for expenses plus investment earnings thereon to the date of the payment.

**NO NOTICE** requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE** consents to the payment out of the Staff Pension Plan for the Employees of 733907 Ontario Ltd., Registration No. 597245, of \$25, 405.78 as at July 31, 2000,



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of Beatrice Foods, Inc., Registration Number 279430;**

**TO:** **Parmalat Dairy & Bakery, Inc.**  
405 The West Mall  
Etobicoke ON M9C 5J1

**Attention:** Mr. John Dalton  
Vice President, Compensation & Benefits  
**Applicant and Employer**

### CONSENT

**ON** or about December 3, 2001, the Superintendent of Financial Services caused to be served on Parmalat Dairy & Bakery, Inc. a Notice of Proposal dated November 29, 2001 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Pension Plan for Employees of Beatrice Foods, Inc., Registration No. 279430 (the "*Plan*"), to Parmalat Dairy & Bakery, Inc. in the amount of \$611,900 as at April 24, 1999, adjusted to reflect investment earnings and losses, other actuarial gains and losses, and expenses.

**NO NOTICE** requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

### **THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS**

to the payment out of the Pension Plan for Employees of Beatrice Foods, Inc., Registration No. 279430, to Parmalat Dairy & Bakery, Inc. in the amount of \$611,900 as at April 24, 1999, adjusted to reflect investment earnings and losses, other actuarial gains and losses, and expenses.

### **THIS CONSENT IS EFFECTIVE ONLY**

**AFTER** the Applicant satisfies me that all benefits and any other payment to which members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at North York, Ontario, this 23rd day of January, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from  
Superintendent of Financial Services  
Financial Services Commission of Ontario  
cc: Rita Vassallo

Watson Wyatt Canada



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the *Act* consenting to a payment out of the **Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration Number 1050210;**

**TO: Beta Brands Limited**  
1156 Dundas Street East  
London ON N5W 5Y4

**Attention:** Mr. George Harrison  
**Chief Financial Officer and Secretary**

### CONSENT

**ON** or about November 28, 2001, the Superintendent of Financial Services caused to be served on Beta Brands Limited a Notice of Proposal dated November 21, 2001 to consent, pursuant to subsection 78(4) of the *Act*, to payment out of The Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210, to Beta Brands Limited in the amount of \$36,619 as at June 30, 2001, plus investment earnings thereon to the date of payment.

**NO NOTICE** requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of The Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210, of \$36,619 as at June 30, 2001, plus investment earnings thereon to the date of payment, to Beta Brands Limited.

DATED at North York, Ontario, this 31st day of January, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from  
Superintendent of Financial Services  
Financial Services Commission of Ontario

## **Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans – Subsection 83(1) of the PBA**

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for the Hourly Employees of Usarco Limited, Registration Number 0597393 (formerly C-15367)** (the "Pension Plan");

**TO:** **Ernst & Young Inc.**  
Ernst & Young Tower  
Toronto-Dominion Centre  
222 Bay Street  
P.O. Box 251  
Toronto ON M5K 1J7

**Attention:** Mr. Brian Denega  
Senior Vice-President  
**Administrator of the Pension Plan the Hourly Employees of Usarco Limited**

**AND TO:** **Usarco Limited**  
363 Wellington Street North  
Hamilton ON L8L 5B2  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
(formerly Coopers & Lybrand)  
Commerce Court West, Suite 3300  
Station Commerce Court  
P.O. Box 31  
Toronto ON M5L 1B2

**Attention:** Roxanne Anderson  
**Receiver and Manager of Usarco Limited**

## **DECLARATION**

### **WHEREAS:**

1. The Pension Plan for the Hourly Employees of Usarco Limited, Registration No. 05973939 (previously C-15367) (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Plan was wound up effective July 31, 1990; and
4. The Superintendent of Pensions appointed Ernst & Young Inc. as the administrator (the "Administrator") of the Plan on September 13, 1990.
5. On November 6, 2001, I issued a Notice of Proposal dated October 31, 2001, to Make a Declaration that the Guarantee Fund applies to the Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.



**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The Supplement to the Windup Report filed by the Administrator indicates an estimated funding deficiency of \$1,713,600 as at December 31, 2000.
2. PricewaterhouseCoopers Inc. was appointed Receiver and Manager of Usarco Limited on October 11, 1990.
3. The Administrator has advised that they were successful in collecting \$509,558.24 of unpaid contributions from the Receiver and Manager for the Plan and are of the opinion that there are no further funds expected from the Receiver and Manager or any other known sources.

DATED at North York, Ontario, this 3rd day of January, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Employees of JPE Canada Inc. who are Members of C.A.W. Locals 1524 and 1987, Registration Number 694570;**

**TO:** **PricewaterhouseCoopers Inc.**  
Royal Trust Tower, Suite 3000  
Toronto Dominion Centre  
P.O. Box 82  
Toronto ON M5K 1G8

**Attention:** Ms. Lois J. Reyes  
**Administrator**

**AND TO:** **JPE Canada, Inc.**  
775 Technology Drive  
P.O. Box 660  
Peterborough ON K9J 6Z8

**Attention:** Mr. Robert Tock  
**Employer**

**AND TO:** **Grant Thornton LLP**  
The Royal Bank Plaza  
South Tower, 19th Floor  
200 Bay Street  
P.O. Box 55  
Toronto ON M5J 2P9

**Attention:** Ms. Andrea Orr  
**Trustee in Bankruptcy**

**AND TO:** **C.A.W. – Local 1524**  
654 Rogers Street  
Peterborough ON K9H 1Y2

**Attention:** Ms. Rose Forestall, President  
**C.A.W. – Local 1987**  
600 Wabanaki Drive  
Kitchener ON N2C 2K4

**Attention:** Mr. David Bailey, President  
**C.A.W. Canada**  
205 Placer Court  
North York ON M2H 3H9

**Attention:** Mr. Tom Murphy,  
National Representative  
**Union**

## **DECLARATION**

### **WHEREAS:**

1. The Pension Plan for Employees of JPE Canada, Inc. who are Members of C.A.W. Locals 1524 and 1987, Registration No. 694570 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. as the administrator (the "Administrator") of the Plan on July 16, 1999; and
4. The Plan was wound up effective February 9, 1999; and
5. On October 17, 2001, the Deputy Superintendent, Pensions, issued a Notice of Proposal, dated October 16, 2001, to Make a Declaration that the Guarantee Fund applies to the Plan; and



6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan at windup was estimated to be 44.32%, with an estimated claim against the Guarantee Fund at windup of \$1,155,965.
2. The estimated claim against the Guarantee Fund at December 1, 2001, is \$1,856,552.
3. The employer, JPE Canada, Inc., made an assignment in bankruptcy on February 8, 1999.
4. The trustee in bankruptcy for JPE Canada, Inc. has advised the Administrator that there are no funds available from the estate of JPE Canada, Inc. to make payment to the Plan.
5. The purchaser of the assets of JPE Canada, Inc. did not provide a new registered pension plan, nor did they continue or assume the Plan.
6. The Administrator is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

DATED at North York, Ontario, this 14th day of January, 2002.

K. David Gordon

Deputy Superintendent, Pension Division

By Delegated Authority from the

Superintendent of Financial Services

Financial Services Commission of Ontario



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Retirement Plan for the Hourly Employees of Superior Machine and Tool (Chatham) Limited, Registration Number 0327601;**

**TO:** **Morneau Sobeco**  
1500 Don Mills Road, Suite 500  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
**Administrator**

**AND TO:** **Zwaig Consulting Inc.**  
Exchange Tower, Suite 1560 ,  
130 King Street West  
P.O. Box 17  
Toronto ON M5X 1J5

**Attention:** Mr. Jeffrey D. Kerbel  
**Trustee in Bankruptcy and  
Interim Receiver and  
Manager**

## **DECLARATION**

### **WHEREAS:**

1. The Retirement Plan for Hourly Employees of Superior Machine and Tool (Chatham) Limited, Registration No. 327601 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator of the Plan on December 22, 1999, and Morneau Sobeco (the "Administrator") is the agent acting for Deloitte & Touche Inc.; and
4. An Order of the Superintendent of Financial Services to windup the plan, dated August 29, 2001, effective July 7, 1999 to July 8, 1999, was served on the Administrator on November 27, 2001; and
5. The Administrator filed on August 10, 2001, an application for a declaration that the Guarantee Fund applies to the Plan in anticipation of making an application for an interim allocation of the Guarantee Fund; and
6. The said application for the declaration indicates that the Administrator was forced to impose financial hardship on current retirees by reducing their pension payments to the level that the Plan can support; and
7. On September 13, 2001, the Deputy Superintendent, Pensions, issued a Notice of Proposal, dated September 12, 2001, to make a Declaration that the Guarantee Fund applies to the Plan; and
8. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.



**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 62% with an estimated deficiency in windup assets compared to windup liabilities of \$3,128,000 as of July 7, 1999.
2. The employer, Superior Machine and Tool (Chatham) Limited, was assigned into bankruptcy on July 8, 1999.
3. The trustee in bankruptcy has advised the Administrator that there are no assets available to the trustee from the estate of Superior Machine and Tool (Chatham) Limited for realization.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

DATED at North York, Ontario, this 15th day of January, 2002.

Tom Golfetto

Director, Pension Plans Branch

By Delegated Authority from

Superintendent of Financial Services

Financial Services Commission of Ontario

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Retirement Plan for the Salaried Employees of Superior Machine and Tool (Chatham) Limited, Registration Number 0691642;**

**TO:** **Morneau Sobeco**  
1500 Don Mills Road, Suite 500  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
**Administrator**

**AND TO:** **Zwaig Consulting Inc.**  
Exchange Tower, Suite 1560  
130 King Street West  
P.O. Box 17  
Toronto ON M5X 1J5

**Attention:** Mr. Jeffrey D. Kerbel  
**Trustee in Bankruptcy and  
Interim Receiver and  
Manager**

## **DECLARATION**

### **WHEREAS:**

1. The Retirement Plan for the Salaried Employees of Superior Machine and Tool (Chatham) Limited, Registration No. 0691642 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator of the Plan on December 22, 1999, and Morneau Sobeco (the "Administrator") is the agent acting for Deloitte & Touche Inc.; and
4. An Order of the Superintendent of Financial Services to windup the plan, dated August 29, 2001, effective July 7, 1999 to July 8, 1999, was served on the Administrator on November 27, 2001; and
5. The Administrator filed on July 6, 2001, an application for a declaration that the Guarantee Fund applies to the Plan, in anticipation of making an application for an interim allocation of the Guarantee Fund; and
6. The said application for the declaration indicates that the Administrator was forced to impose financial hardship on current retirees by reducing their pension payments to the level that the Plan can support;
7. On September 13, 2001, the Deputy Superintendent, Pensions, issued a Notice of Proposal, dated September 12, 2001 to make a Declaration that the Guarantee Fund applies to the Plan; and
8. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.



**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 55% with an estimated deficiency in windup assets compared to windup liabilities of \$3,000,000 as of July 7, 1999.
2. The employer, Superior Machine and Tool (Chatham) Limited, was assigned into bankruptcy on July 8, 1999.
3. The trustee in bankruptcy has advised the Administrator that there are no assets available to the trustee from the estate of Superior Machine and Tool (Chatham) Limited for realization.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

DATED at North York, Ontario, this 15th day of January, 2002.

Tom Golfetto

Director, Pension Plans Branch

By Delegated Authority from

Superintendent of Financial Services

Financial Services Commission of Ontario



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited, Registration Number 0582668 (formerly C-14740)** (the "Plan");

**TO:** **Deloitte & Touche Inc.**  
c/o Morneau Sobeco  
1500 Don Mills Road, Suite 500  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Administrator of the Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited**

**AND TO:** **Bakelite Thermosets Limited**  
621 Dundas Street East  
Belleville ON K8N 5C5

**Attention:** K.W. Whitney  
Treasurer  
**Employer**

## **DECLARATION**

### **WHEREAS:**

1. The Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited, Registration No. 0582668 (previously C-14740) (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Plan was wound up effective March 31, 1990 by the Employer; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Plan on March 31, 1997.
5. On December 18, 2001, I issued a Notice of Proposal dated December 13, 2001, to Make a Declaration that the Guarantee Fund applies to the Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE** I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

1. The Addendum to the Supplemental Actuarial Report filed by the Administrator indicates an estimated claim against the Guarantee Fund of \$121,000 as at December 31, 2001.



2. The place of business of the Employer is closed.
3. The Administrator has advised that since the Employer is no longer in business, there are no further funds expected from any other sources.

DATED at North York, Ontario, this 6th day of February, 2002.

K. David Gordon

Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario



## **Allocations of Money from the Pension Benefits Guarantee Fund – Subsection 34(7) of Regulation 909**

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited, Registration Number 0582668 (formerly C-14740)** (the “Plan”);

**TO:** **Deloitte & Touche Inc.**  
c/o Morneau Sobeco  
1500 Don Mills Road, Suite 500  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Administrator of the  
Non-Contributory Pension  
Plan for Employees of  
Bakelite Thermosets Limited**

## **ALLOCATION**

**WHEREAS** on February 6th, 2002, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the “Act”), that the Pension Benefits Guarantee Fund (the “Guarantee Fund”) applies to the Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited, Registration No. 0582668 (formerly C-14740) (the “Plan”);

**NOW THEREFORE** I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the “Regulation”), an amount not to exceed \$121,000, to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation.

DATED at North York, Ontario, this 6th day of February, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario



## TRIBUNAL ACTIVITIES

### Appointments of FST Board Members

Name and O.C.	Effective Appointment Date	Expiry Date
<b>Milczynski</b> , Martha (Chair) O.C. 1622/2001 O.C. 1665/99 O.C. 1808/98	June 20, 2001 October 6, 1999 July 8, 1998	June 19, 2004 July 7, 2001 October 6, 1999
<b>McNairn</b> , Colin (Vice-Chair) O.C. 1623/2001 O.C. 1809/98	June 20, 2001 July 8, 1998	June 19, 2004** July 7, 2001
<b>Bush</b> , Kathryn M. (Vice-Chair) O.C. 1052/2000 O.C. 1666/99 O.C. 1191/99 O.C. 904/97	May 31, 2000 October 6, 1999 June 17, 1999 May 14, 1997	May 30, 2002** June 16, 2000 October 6, 1999 June 16, 1999
<b>Corbett</b> , Anne O.C. 1438/2001	June 20, 2001	June 19, 2004**
<b>Erlichman</b> , Louis O.C. 439/2002 O.C. 2527/98 O.C. 1592/98	January 23, 2002 December 9, 1998 June 17, 1998	January 22, 2005** December 8, 2001 December 16, 1998
<b>Forbes</b> , William M. O.C. 1624/2001 O.C. 520/98	June 20, 2001 March 25, 1998	June 19, 2002** March 24, 2001
<b>Gavin</b> , Heather O.C. 440/2002 O.C. 11/99	January 23, 2002 January 13, 1999	January 22, 2005** January 12, 2002
<b>Greville</b> , M. Elizabeth O.C. 441/2002 O.C. 222/99 O.C. 2405/95	January 23, 2002 January 27, 1999 February 8, 1996	January 22, 2005** January 26, 2002 February 7, 1999
<b>Martin</b> , Joseph P. O.C. 1626/2001 O.C. 1810/98	June 20, 2001 July 8, 1998	June 19, 2004** July 7, 2001
<b>Moore</b> , C.S. (Kit) O.C. 1625/2001 O.C. 1591/98	June 20, 2001 July 1, 1998	June 19, 2004** June 30, 2001
<b>Short</b> , David A. O.C. 2118/2001	October 24, 2001	October 23, 2004**
<b>Vincent</b> , J. David O.C. 2119/2001	October 24, 2001	October 23, 2004**
<b>Wires</b> , David E. O.C. 2166/99 O.C. 257/97	February 26, 2000 February 27, 1997	February 25, 2003 February 26, 2000

\*\* Or on the day FSCO/OSC merges, if earlier.



## Pension Hearings Before the Financial Services Tribunal

### **Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number 336081, FST File Number P0099-2000;**

On February 24, 2000, Mr. Patrick J. Moore, President of the United Brewers' Warehouse Workers, Local 375W, requested a hearing seeking an Order directing "the Superintendent to order the administrator of the Plan (Brewers Retail Inc.) to cease administering the Plan with an improperly constituted advisory committee and to cause the creation of a properly constituted advisory committee pursuant to the *Act* and formulating documents." The hearing request arose as a result of a letter from the Superintendent dated January 26, 2000, in which the Superintendent stated that there were no grounds under the *Pension Benefits Act* and Plan to order the establishment of an advisory committee. The letter also stated that any issue that Mr. Moore may have with the letter of understanding, which is part of the agreement between Brewers Retail Inc. and United Food and Commercial Worker's Provincial Board (the "UBWW/UFCW"), wherein Brewers Retail Inc. acknowledges that the UBWW/UFCW has a right to appoint a pension committee with membership, roles and responsibilities as set out in the *Pension Benefits Act*, would be a labour issue and not within the Superintendent's jurisdiction.

At a pre-hearing conference held on May 17, 2000, Brewer's Retail Inc. and the UBWW/UFCW were granted full party status. At the pre-hearing conference the parties agreed that before the Financial Services Tribunal considered the matter on its merits, it was necessary for it to determine the preliminary issue of whether it

had jurisdiction to grant the relief sought in Mr. Moore's Request for Hearing. At the pre-hearing conference, the Superintendent raised the issue of whether notice to former members of the Plan ought to be provided as it appeared that former members of the Plan were not represented.

In a telephone conference held on November 16, 2000, the hearing on the Notice issue was scheduled for March 7, 2001. The hearing on the jurisdictional issue was scheduled for September 28, 2001.

On March 7, 2001, the Tribunal decided that former members had received adequate notice of the proceeding through the existing parties to the proceeding. The written Reasons for Decision dated April 10, 2001, were published in Volume 10, Issue 2 of the Pension Bulletin.

On September 28, 2001, the Tribunal decided that it did not have jurisdiction to grant the relief sought by Mr. Moore. Written Reasons for Decision are forthcoming.

### **Ontario Public Service Pension Plan, Registration Number 208777, FST File Number P0116-2000;**

On August 2, 2000, the Ontario Pension Board filed a Request for Hearing in respect of the Superintendent's Notice of Proposal dated July 12, 2000, ordering the Ontario Pension Board to pay Mr. Victor Burns his full pension benefits, with interest payable pursuant to subsection 24(11) of Regulation 909 made under the *Pension Benefits Act*, retroactive to the date of Mr. Burns' retirement from the Ontario Provincial Police ("OPP"), within 60 days from the date of the Order, and on an ongoing basis.

An Application for Party Status was filed by Victor Burns on November 9, 2000, and full party status was granted by the Financial Services Tribunal at a pre-hearing conference held on November 23, 2000.

The hearing was held on October 15 and 16, 2001. Reasons for Decision, dated February 28, 2002, are published in this Pension Bulletin on page 91.

**Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Incorporated, Registration Number 344002, FST File Number P0130-2000;**

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve a Partial Windup Report in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each windup report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the windup period; (b) apply the growth provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial windup; and (d) provide for the distribution of assets related to the partial windup group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice

of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the Order subject to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring a motion with respect to answers to interrogatories. The motion is scheduled for June 4, 2002.

**Marshall-Barwick Inc.  
(formerly Marshall Steel Limited),  
Registration Number 0968081,  
FST File Number P150-2001;**

On January 16, 2001, Marshall-Barwick Inc. (formerly Marshall Steel Ltd.) requested a hearing in respect of the Superintendent's Notice of Proposal dated December 12, 2000. The Superintendent is proposing to refuse to approve a Partial Windup Report as at August 28, 1992, respecting the Retirement Plan for Salaried Employees of Marshall Steel Ltd. and Associated Companies in relation to employees who ceased to be employed by Marshall Steel Ltd. as a result of the closure of its plant in Milton, Ontario. The Superintendent's basis for the Notice of Proposal is that the report does not protect the interests of all those affected by the partial windup, specifically, Mr. Jeffrey G.



Marshall, an employee who was terminated during the windup period. On June 4, 2001, Jeffrey G. Marshall applied for party status.

A pre-hearing conference was held on August 13, 2001. The hearing scheduled for November 29 and 30, 2001, was adjourned as a result of a joint request made by the parties on November 6, 2001. The reason for the request was due to the applicant providing Mr. Marshall with actuarial data in respect of Mr. Marshall's benefit entitlements. Mr. Marshall required additional time to obtain expert advice in respect of the information. The hearing is scheduled for September 9 and 10, 2002.

**National Steel Car Limited, Registration Numbers 0215020 and 0215038, FST File Number P154-2001;**

On March 7, 2001, representatives for members of the Pension Plan for Salaried Employees of National Steel Car Limited requested a hearing regarding the Superintendent's Consent to the Transfer of Assets of the Pension Plan for Salaried Employees of National Steel Car Limited to the Pension Plan for Hourly-Paid Employees of National Steel Car Limited. The Salaried Plan is in a surplus position and the Hourly-Paid Plan has an unfunded liability.

Applications for Party Status were filed on behalf of National Steel Car Limited and certain representatives of the United Steel Workers of America, Local 7135, on behalf of the members of the Hourly-Paid Plan. The two applicants for party status were joined as parties by order at the pre-hearing conference held on June 21, 2001. The main issues in this case are whether the Tribunal has the jurisdiction to entertain the applicant's request for a hearing and whether the Superintendent's Consent

to the Transfer of Assets should be set aside or varied.

A settlement conference was held September 24, 2001. The hearing was held January 15, 16 and 17, 2002. The decision was reserved.

**Independent Order of Foresters Fieldworkers, Registration Number 0354399, FST File Number P155-2001;**

On August 12, 2001, The Independent Order of Foresters ("IOF") requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to refuse to consent to an application for the payment of the surplus of the IOF Fieldworkers Pension Plan to the employer. The Superintendent proposed to refuse consent on the basis that she was not satisfied that the Plan had a surplus and that the Plan provides for the payment of any surplus to the employer on the windup of the Plan.

A pre-hearing conference was held on July 4, 2001, at which Mr. Irvin Grainger was joined as a party to the proceeding. The pre-hearing conference continued on July 27, 2001, at which time it was agreed that a settlement conference would be held on November 13, 2001. A motion by IOF for a determination of the appropriate manner and form of giving notice of the hearing in this matter was heard on December 7, 2001, by a panel of the Tribunal, and was followed by a further continuation of the pre-hearing conference. At the motion hearing it was ordered that notice of hearing be by way of national newspaper publication, and that the notice also be provided by ordinary mail to all members and former members affected by the windup. Written Reasons for Orders dated January 8, 2002, are published

on page 86. Hearing dates are scheduled for June 18, 19, 20 and 21, 2002.

**Cooper Industries (Canada) Inc.,  
Registration Number 0240622, FST File  
Number P156-2001;**

On April 17, 2001, Cooper Industries (Canada) Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 8, 2001, to refuse to approve a Partial Windup Report prepared in November 1999, in relation to the partial windup of the Retirement Plan for Salaried Employees of Cooper Canada – Plan A, Registration No. 240622, as at March 30, 1992, in relation to employees at the Port Hope location of Cooper Industries (Canada) Inc. and to make an Order requiring Cooper Industries (Canada) Inc. to refrain from using and to preserve for distribution that portion of the surplus of the Plan attributable to the Port Hope location. The basis for the Notice of Proposal was that the Partial Windup Report proposed that the surplus assets of the Plan attributable to the Port Hope location be retained for continuing application toward future current service contributions for the Plan's continuing membership and, therefore, failed to provide for distribution of the Port Hope surplus assets.

On May 14, 2001, Messrs. Ray Mills and Larry Battersby applied for party status on behalf of Plan members and former Plan members employed at the Port Hope plant and beneficiaries of same.

A pre-hearing conference was held on September 5, 2001, at which Messrs. Mills and Battersby were joined as parties. The pre-hearing conference is scheduled to continue on May 27, 2002.

**Pension Plan for the Employees of  
Dyment Limited, Registration  
Number 0242735, FST File P0157-2001;**

On April 18, 2001, Dyment Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to make an Order that the Pension Plan for the Employees of Dyment Limited, Registration No. 0242735, be wound up in full effective August 23, 1996, and to refuse to approve the Actuarial Report prepared in April 1997 in relation to the partial windup of the Plan as at August 23, 1996.

The basis for the Notice of Proposal was that as of August 23, 1996, there were no remaining active members in the Plan and Dyment was no longer required to make contributions. The basis for refusing to approve the Actuarial Report is that the report does not meet the requirements of the *Pension Benefits Act* and the Regulations and does not protect the interests of the members or former members of the Plan.

On May 22, 2001, Mr. Mobeen Khaja applied for party status. Mr. Khaja was part of a group of employees who were subject to the partial windup of the Plan, and would be affected by a full windup of the Plan.

A pre-hearing conference was held on July 13, 2001, at which Mr. Khaja was joined as a party to the proceeding. Hearing dates originally scheduled for January 24 and 25 were changed to April 15 and 16, 2002, and were subsequently adjourned at the parties' request so that settlement discussions may continue.



**Camco, Inc. Pension Plan Number 4,  
Registration Number 0583302 to  
Camco, Inc. Pension Plan Number 7,  
Registration Number 0583336,  
FST File Number P160-2001;**

On May 14, 2001, Camco, Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 30, 2001, to refuse to consent to a transfer of assets from the Camco, Inc. Pension Plan No. 4, Registration No. 0583302, to the Camco, Inc. Pension Plan No. 7, Registration No. 0583336.

The basis for the Notice of Proposal was that the asset transfer does not protect the pension benefits and other benefits of the former members of Plan 4 under subsection 81 (5) of the *Pension Benefits Act*.

A pre-hearing conference was held on September 24, 2001. The settlement conference scheduled for December 17, 2001 was rescheduled to February 7, 2002. Parties continuing settlement discussions.

**Consumers Packaging Inc., Pension  
Plan II, Registration Number 0998682,  
FST File Number P162-2001;**

On May 17, 2001, Consumers Packaging Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 20, 2001, to refuse to approve a Partial Windup Report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial windup of the Consumers Packaging Inc. Pension Plan II, Registration No. 0998682, as at May 7, 1997, and to refuse to register an amendment to such Pension Plan filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment No. 2. The basis for the Notice of Proposal was that Consumers Packaging Inc. filed a Partial Windup Report in 1997. The Superintendent

issued two Notices of Proposal in 1999 ordering Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees and refusing to approve the 1997 Partial Windup Report on the grounds that the replacement call-in employees were not included in the Report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial windup. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal with respect to both Notices of Proposal. The hearing concerning the call-in employees was settled by the parties and Consumers Packaging Inc. accepted as members of the Plan those replacement call-in employees who met certain conditions. The hearing request regarding the "grow-in" benefits was withdrawn. Consumers Packaging Inc. was ordered to file an amended Partial Windup Report. In addition, in 1997, Consumers Packaging filed an application to register Amendment No. 2 to the Plan which provided enhanced bridge benefits to some members.

On May 19, 2000, Consumers Packaging filed a revised Partial Windup Report (the "revised Report") and a revised application to register Amendment No. 2 (the "revised Amendment"). The Superintendent issued the April 20, 2001 Notice of Proposal based on that the revised Amendment is void pursuant to subsection 19(3)(b) of the *Pension Benefits Act* and that the revised Report does not meet the requirements of the *Pension Benefits Act* pursuant to subsection 70(5) because the commuted value of the pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the *Act* and does not protect the interests of the members and former members of the Plan for the same reason.



The Superior Court of Justice, Commercial List, issued an Order, dated May 23, 2001, stating that any suit, action, enforcement process, extra-judicial proceeding, regulatory, administrative or other proceeding against or in respect of Consumers Packaging Inc. already commenced be stayed and suspended until and including June 22, 2001. A further Order was issued on June 18, 2001, extending the stay period until August 15, 2001, and again until October 1, 2001.

An Application for Party Status was filed on behalf of United Steelworkers of America, Local 203G, on February 13, 2002, and full party status was granted by the Financial Services Tribunal at a pre-hearing conference held on February 19, 2002.

The hearing is scheduled for July 29 and 31, 2002.

**CBS Canada Co., Westinghouse Canada Inc. Pension Plan, Registration Numbers 348409 and 526632, FST File Number P164-2001;**

On June 8, 2001, CBS Canada Co., the successor to Westinghouse Canada Inc., requested hearings in connection with the Superintendent's Notices of Proposal dated May 9 and 15, 2001, to refuse to approve various Partial Windup Reports in respect of the Salaried Employees Pension Plan and the Hourly Paid Employees Pension Plan of Westinghouse Canada Inc. The partial windups were triggered by the closure by ABB Canada Inc. of its plants in London, Ontario; St. Jean, Quebec; and Burlington, Ontario; at which it carried on businesses acquired from Westinghouse Canada Inc., and by the closure by Westinghouse Canada Inc. of its Motor Division plant in Hamilton, Ontario.

The basis for each Notice of Proposal was that the relevant Partial Windup Report failed to provide employer request early retirement benefits and related bridge benefits, contemplated by each Plan, to all members of the partial windup group whose age plus years of service equaled at least 55 and because the Report failed to provide for the distribution of surplus relating to the partial windup group.

On June 19, 2001, CAW Canada, which represented the employees who were members of the Westinghouse Hourly Paid Employees Pension Plan filed an Application for Party Status in these proceedings. At a pre-hearing conference on November 5, 2001, CAW Canada was granted party status in the proceedings concerning the Notices of Proposal relating to the Hourly Employees Pension Plan and was given limited rights to participate in the proceedings concerning the Notices of Proposal relating to the Salaried Employees Pension Plan. The various proceedings were directed to be heard together.

At a continuation of the pre-hearing conference, held on November 29, 2001, a hearing was scheduled for February 4-5, 2002 to deal with several jurisdictional issues to be brought on by motion of CBS Canada Co. Those issues included the following:

- whether the Superintendent was entitled to rescind the initial approvals that she had given with respect to several of the partial windup reports, for failure to adhere to the doctrine of fairness, and for which she subsequently substituted Notices of Proposal to refuse approval;
- whether the Tribunal could direct the Superintendent to refuse approval of certain of the Windup Reports on the basis of a



ground that was not specifically recited in the relevant Notices of Proposal;

- whether the Tribunal could determine the responsibility for any special benefits payable to the former Westinghouse employees at the facilities that were closed by ABB Incorporated as between CBS Canada Co. and ABB Incorporated; and
- whether the Tribunal could order that ABB Incorporated be added as a party to the proceedings against its will.

At the hearing on the jurisdictional motion, the Tribunal refused to order that ABB Inc. be added as a party, but otherwise reserved its determination of the issues raised by the motion.

The hearing on the merits has been scheduled for May 13-17 and May 28-30, 2002.

**Crown Cork & Seal Canada, Inc.,  
Registration Numbers 474205,  
595371 and 338491,  
FST File Number P0165-2001;**

On June 29, 2001, Crown Cork & Seal Canada, Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada, Inc. from the Crown Cork & Seal Canada, Inc. Pension Plan for Salaried Employees, Registration No. 0474205, and The Pension Plan for Clerical Employees of Crown Cork & Seal Canada, Inc., Registration No. 0595371, into the Crown Cork & Seal Canada, Inc. Pension Plan for Employees, Registration No. 338491.

The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.

At the request of both parties a settlement conference was held on October 30, 2001, prior to the scheduling of the pre-hearing conference. The parties agreed to adjourn this matter *sine die* pending discussions between the parties.

**Samsonite Canada Inc., Samsonite  
Canadian Service Related Pension Plan,  
Registration Number 398578,  
FST File Number P0166-2001 and  
FST File Number P175-2001;**

On July 3, 2001, Samsonite Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated June 1, 2001, to refuse to consent to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Service Related Pension Plan, Registration No. 398578.

On November 2, 2001, Samsonite Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated October 11, 2001, to refuse to consent to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Retirement Income Plan, Registration No. 373225.

At the pre-hearing conference held on November 9, 2001, the parties requested that these two matters be joined and heard together. The matters were joined and a hearing is scheduled for June 3, 2002.



**James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;**

On July 13, 2001, James MacKinnon requested a hearing with respect to the Superintendent's Notice of Proposal dated June 20, 2001, to refuse to make an Order regarding Mr. MacKinnon's request that he is entitled to receive a "Thirty and Out" pension benefit from the Labourers' Pension Fund of Central and Eastern Canada. The basis for the refusal is that in refusing to grant Mr. MacKinnon a "Thirty and Out" pension, the Plan administrators have administered the Plan in compliance with requirements of the *Pension Benefits Act*, the Regulations and the filed documents in respect of which the Superintendent of Financial Services has issued a certificate of registration. Subsection 87(2) of the *Act* allows the Superintendent to make an Order only if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the Regulations or the pension plan.

On July 31, 2001, the Board of Trustees of the Labourers' Pension Fund of Central and Eastern Canada filed for party status on the basis that they are the Administrators of the Plan and wish to fulfill their fiduciary duties to all beneficiaries to ensure that only valid and proper claims for benefits are paid out from the Fund to protect the interests of all beneficiaries.

At the pre-hearing conference held on November 22, 2001, party status was granted to the Labourers' Pension Fund of Central and Eastern Canada. A settlement conference is scheduled for April 5, 2002, and the hearing is scheduled for July 17-18 and August 16, 2002.

**Imperial Oil Limited Retirement Plan, Registration Number 347054, FST File Number P0169-2001;**

In this matter, the Superintendent alleges that, effective April 28, 1995, Imperial Oil Limited ("IOL") sold its credit card operations to General Electric Capital Canada Inc. ("GE Capital"), at which time 37 individuals, who had been employed by IOL in that business and were members of the IOL Retirement Plan, became employees of GE Capital and members of its pension plan, while maintaining their accrued benefits in the IOL Retirement Plan.

On August 3, 2001, the Superintendent issued Notices of Proposal to make Orders requiring:

- that the IOL Retirement Plan be wound up in relation to those members and former members of the Plan who ceased to be employed by GE Capital, between March 2000 and July 2000, as a result of the closure of its Markham, Ontario credit card facility; and
- that such members and former members of the IOL Retirement Plan be given credit for both age and service at the time they ceased to be employed by GE Capital when determining their benefits, in accordance with section 80(1)(c) of the *Pension Benefits Act*, under the IOL Retirement Plan.

On August 24, 2001, IOL requested a hearing in respect of these Notices of Proposal.

A pre-hearing conference was held on January 9, 2002. The hearing is scheduled for May 8-9 and June 10-11, 2002.



**Stanley Canada Inc. Pension Plan for Designated Employees of Stanley Canada Inc., Registration Number 456897, FST File Number P0170-2001;**

On August 27, 2001, Stanley Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated July 26, 2001, to refuse to consent to the Application for Payment of Surplus to the Employer dated April 1999, pursuant to section 78(1) of the *Pension Benefits Act*.

An Application for Party Status was filed on November 20, 2001, by Mr. Blaine Mitton, a Member of the Plan.

The pre-hearing conference scheduled for November 28, 2001, was rescheduled to January 10, 2002, at which time Mr. Mitton was granted party status. On January 11, 2002, an Application for Party Status was filed by Mr. Edward Holba, a Member of the Plan. The hearing is scheduled for May 21-24, 2002.

**Canadian Tack & Nail Ltd. Pension Plan for Salaried Employees, Registration Number 0581306, FST File Number P0171-2001;**

On September 14, 2001, Canadian Tack & Nail Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated August 14, 2001, to make an Order under section 87 of the *Pension Benefits Act*, requiring the Employer or Administrator of the Plan to remit within 30 days of receiving the Notice of Proposal, outstanding contributions in the amount of \$67,933 as of December 31, 1999, owed to the Pension Fund together with interest payable under section 24 of the Regulation 909 under the *Act*.

The basis for the Notice of Proposal is that subsection 87(2) of the *Act* allows the

Superintendent to make an Order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the Regulations or the pension plan or if the employer, administrator of a pension plan, or any other person is contravening a requirement of the *Act* or the Regulations.

At a pre-hearing conference on February 7, 2002, the parties agreed to a settlement conference, and will advise the Financial Services Tribunal when it is to be scheduled.

**The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;**

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the Application for Payment of Surplus to the employer dated July 17, 2000, pursuant to section 78(1) of the *Pensions Benefit Act* from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference is scheduled for April 25, 2002.

**Pension Plan for Employees of Proctor & Redfern Limited, Registration Number 0289579, FST File Number P0173-2001;**

On November 5, 2001, certain Former Members requested a hearing regarding the Superintendent's Notice of Proposal dated October 3, 2001, to refuse to make an Order under sections 69 and 87 of the *Pension Benefits Act*. The Superintendent is proposing to refuse to make an Order that the Plan be partially wound up



with respect to former employees of Proctor & Redfern Limited whose employment was terminated between and including 1994 and 1998; to refuse to make an Order that the former employees whose employment was terminated between and including 1994 and 1998 as well as former employees who had their pension benefits annuitized in 1998 and 1999 be included in the surplus sharing group identified in the revised Windup Report dated December 2000; a refusal to order that they be entitled to share in the surplus distribution on an equitable basis; and a refusal to make an Order that Earth Tech (Canada) Inc. refund to the Plan any funds improperly withdrawn from the Plan to fund its own legal and actuarial costs.

On November 26, 2001, Earth Tech (Canada) Inc. filed for party status on the basis that it is the Administrator of the Plan and has a duty to ensure that the Plan is properly wound up.

A pre-hearing conference is scheduled for May 1, 2002.

**Retirement Pension Plan for Employees of Twin Oak Credit Union Ltd.,  
Registration Number 284257,  
FST File Number P0178-2002;**

On January 11, 2002, Twin Oak Credit Union Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated December 13, 2001, proposing to make an Order under section 87 of the *Pension Benefits Act*, with respect to Carol Joseph and any other part-time employee eligible for membership in the Plan. The Superintendent is ordering that the Administrator of the Plan pay to Ms. Joseph her pension benefit determined on the basis that Ms. Joseph was eligible for membership and should have been enrolled in the Plan effective January 1, 1978. The Superintendent is also ordering the Administrator to provide to

any other part-time employee who was eligible to participate in the Plan, the monthly pension benefit determined on the basis that the part-time employee was eligible for membership and should have been enrolled in the Plan effective January 1, 1978 or later, if employed at a later date. Any lump sum owing to Ms. Joseph or any other eligible part-time employee representing retroactive payments shall also be credited with interest payable pursuant to subsection 21(11) of Regulation 909 made under the *Act*.

A pre-hearing conference is scheduled for April 24, 2002.



## Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

<b>FST File#</b>	<b>Superintendent of Financial Services' Notice of Proposal:</b>	<b>Comments</b>
U0174-2001	To Refuse to Consent, dated October 5, 2001	Reasons for Decision dated December 20, 2001 are published in this bulletin on Page 84
U0177-2002	To Refuse to Consent, dated November 22, 2001	Pre-Hearing (telephone conference) held on January 29, 2001
U0179-2002	To Refuse to Consent, dated November 22, 2001	Written submissions being exchanged
U0180-2002	To Refuse to Consent, dated December 21, 2001	Written submissions being exchanged
U0181-2002	To Refuse to Consent, dated January 16, 2002	Written submissions being exchanged

## Decisions to be Published

The Independent Order of Foresters, Orders

*(Date of Decision: December 7, 2001)*

Financial Hardship, U0174-2001, Reasons for Order

*(Date of Decision: December 20, 2001)*

The Independent Order of Foresters, Reasons for Orders

*(Date of Decision: January 8, 2002)*

Ontario Public Service Pension Plan (Victor Burns), Reasons for Order

*(Date of Decision: February 28, 2002)*



## FINANCIAL SERVICES TRIBUNAL DECISIONS WITH REASONS

**INDEX NO.:** FST File Number P0155-2001

**PLAN:** The Independent Order of Foresters Fieldworkers' Pension Plan,  
Registration Number 0354399

**DATE OF DECISION:** December 7, 2001

**PUBLISHED:** Bulletin 11/2 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services (the "Superintendent"), pursuant to the Act, to refuse to approve a windup report in respect of the Pension Plan for The Independent Order of Foresters Fieldworkers' Pension Plan, Registration No. 0354399 (the "Plan");

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act;

**BETWEEN:**

**THE INDEPENDENT ORDER  
OF FORESTERS**

**Applicant**

- and -

**SUPERINTENDENT OF  
FINANCIAL SERVICES**

- and -

**IRVIN GRANGER  
Respondents**

### ORDERS

We order that notice of the hearing in this matter be provided by ordinary mail to all members and former members affected by the windup of the Independent Order of Foresters Fieldworkers' Pension Plan who would be potentially entitled to participate in a distribution of surplus of the Plan on its windup effective December 31, 1997. We also order that appropriate newspaper notice of the hearing be provided.

We order that the Applicant bear the costs of the provision of notice of hearing, subject to any arrangement for the allocation of those costs to the Plan should the Applicant's Application for Withdrawal of Surplus from the Plan be ultimately approved and subject to any order for costs that the Tribunal might order at the end of this proceeding.

**MADE** orally on the 7th day of December, 2001.

Louis Erlichman,  
Member of the Panel

Heather Gavin,  
Member of the Panel

Colin McNairn,  
Chair of the Panel



INDEX NO.: FST File Number U0174-2001

DATE OF DECISION: December 20, 2001

PUBLISHED: Bulletin 11/2 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated October 5, 2001, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

## REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated October 5, 2001, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement

savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "August Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "June Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

**89.-(4)** Only one application may be made during each 12-month period.

**(5)** An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the August Application.

4. The June Application was signed by the Applicant on June 1, 2001. On June 4, 2001, the Superintendent consented to withdrawal of \$10,042.00 from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the June Application was a successful application.

5. On August 22, 2001, the Applicant signed the August Application, in which he



applied to withdraw the maximum amount allowed from his locked-in account on the basis of low income. As this application was made within 12 months after the successful June Application, which was made on the basis of low income, the August Application does not meet the conditions set out in sub-sections 89(4) and 89(5) of the Regulation.

6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the August Application cannot be granted because it fails to meet one of those requirements. If in June 2002, 12 months after the date of the successful June Application, the circumstances of the Applicant are such that he could meet the qualifications for reliance on low income, a further such application for withdrawal of locked-in funds can then be made to the Superintendent.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated October 5, 2001, in respect of the August Application.

## ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated October 5, 2001, directed to the Applicant.

DATED at North York, this 20th day of December, 2001.

Mr. C. S. Moore  
Member, Financial Services Tribunal



INDEX NO.: FST File Number P0155-2001

PLAN: The Independent Order of Foresters Fieldworkers' Pension Plan,  
Registration Number 0354399

DATE OF DECISION: January 8, 2002

PUBLISHED: Bulletin 11/2 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario).*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services (the "Superintendent"), pursuant to the Act, to refuse to consent to the payment of surplus out of The Independent Order of Foresters Fieldworkers' Pension Plan, Registration No. 0354399 (the "Plan");

**AND IN THE MATTER OF** a Proposal by the Superintendent, pursuant to the Act, to refuse to approve a Windup Report in respect of the Pension Plan;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act;

**BETWEEN:**

**THE INDEPENDENT ORDER  
OF FORESTERS  
Applicant**

- and -

**SUPERINTENDENT OF  
FINANCIAL SERVICES**

- and -

**IRVIN GRAINGER**

Respondents

**BEFORE:**

Mr. Colin H.H. McNairn,  
Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman,  
Member of the Tribunal and of the Panel  
Ms. Heather Gavin,  
Member of the Tribunal and of the Panel

**APPEARANCES:**

**For The Independent Order of Foresters:**

Ms. Lisa J. Mills

**For the Superintendent of Financial Services:**

Mr. Mark Bailey  
Ms. Deborah McPhail

**For Mr. Irvin Grainger:**

Mr. Gerald Owen (by conference telephone)

**HEARING DATE:**

December 7, 2001  
(North York, Ontario).



## REASONS FOR ORDERS

### Background

A motion was brought before the Tribunal to determine the nature of the notice to be provided of the hearing in this proceeding. The proceeding before the Tribunal was commenced by way of a Request for Hearing filed on April 11, 2001 by The Independent Order of Foresters (the "IOF") challenging a Notice of Proposal of the Superintendent of Financial Services (the "Superintendent") dated March 19, 2001. In that Notice, the Superintendent proposes to refuse consent to an application by IOF for the withdrawal of surplus from the Independent Order of Foresters Fieldworkers' Pension Plan (the "Plan"), on its windup effective December 31, 1997, and to refuse approval of the Windup Report in respect of the Plan filed by IOF. The stated basis for the proposed refusals is that IOF had not demonstrated that the excess assets in the Plan constituted surplus for the purposes of the *Act* and that the Plan and the assets held in the fund of the Plan were subject to a trust for the benefit of the members and, therefore, no part of those assets could be properly paid to IOF even if they constituted surplus.

IOF's application for the withdrawal was made to the Superintendent on the basis that at least two-thirds of the Plan members had consented to a surplus distribution proposal under which IOF would share in a distribution of the surplus on a 50-50 basis with the members, former members and other persons entitled to benefits under the Plan, a group totalling 225 individuals. In soliciting consents to the surplus distribution proposal, IOF sent to the Plan members, on September 2, 1999, a Notice of Surplus Application that, in accordance with the requirements of the *Act* and the Regulation under the *Act*, advised recipients of the Notice

that they could make submissions to the Superintendent concerning IOF's application, within 30 days of receipt of the Notice. Additional notice was given, at a later date, by publication in the *Globe and Mail* and *La Presse*. That notice also advised of the right to make submissions to the Superintendent concerning IOF's application, within 30 days of the date of publication. A number of submissions were, in fact, made to the Superintendent about the application. The Superintendent sent copies of the Notice of Proposal to those who had made submissions as well as to the IOF, as required by subsection 89(3.1) of the *Act*. One of those individuals, Irvin Grainger, applied for and has been granted party status in this proceeding.

On November 20, 2001, IOF sent a letter to Plan members updating them on the application process and the next steps in the proceeding before the Tribunal. No notice was given of the time and place of the hearing before the Tribunal, however, as this was not yet established.

### Arguments

The Superintendent, supported by Mr Grainger, took the position that notice of the hearing should be given by mail to the members and former members of the Plan and by newspaper publication, all at the expense of IOF.

IOF took the position that notice of the hearing need not be given to those members and former members of the Plan who had declined to avail themselves of the opportunity to make submissions to the Superintendent in connection with IOF's surplus withdrawal application. It argued that the regulatory scheme under the *Act* involves a multi-step process that is really a continuum, the final stage of which is a hearing before the Tribunal should there be a



request for hearing. That scheme simply provides for notice to Plan members in connection with any proposed Application for Surplus Withdrawal to the Superintendent but not for notice (except for notice to those who are parties) at the stage of any subsequent Tribunal hearing. The requirements of procedural fairness, IOF argued, were satisfied by the initial notice, subject to any common law requirement to give further notice to "known opponents," such as those who had objected to the application before the Superintendent. In any case, IOF claimed, its letter of November 20, 2001 made any further notice to members and former members of the Plan unnecessary. Finally, IOF maintained that if any notice of hearing were to be required, the cost should be borne out of the Plan, and not by IOF.

### Analysis

This Tribunal has the authority under section 22 of the *Financial Services Commission of Ontario Act, 1997* (the "*Governing Act*"), to "determine what constitutes adequate public notice" for a proceeding before the Tribunal. The term "public notice" implies notice to persons who may not be parties to a particular proceeding and would, at least, embrace notice by newspaper publication.

The Tribunal also has the authority under section 22 of the *Governing Act* to "make rules for the practice and procedure to be observed" for a proceeding before the Tribunal. The Tribunal has adopted Interim Rules of Practice and Procedure, pursuant to this provision, that apply generally to proceedings before it. Those Rules do not constrain the authority of the Tribunal to determine what constitutes adequate public notice of a hearing. Indeed, Rule 22.02 reinforces the authority of the Tribunal to provide for notice beyond the immediate

parties to a proceeding by requiring the Tribunal to provide written notice of a hearing "to the parties and others as required by law, and as the Tribunal considers necessary" (emphasis added).

On this motion, we heard arguments as to what notice of hearing is required, in the circumstances of this case, by the terms of the *Act* and the Regulation under it and by the common law rules of natural justice and fairness. While these sources may be instructive in some situations, we are not limited by them as we have the authority to decide, in a particular case, what public notice is adequate and to whom we consider notice to be necessary. In other words, these sources simply establish the minimum requirements of notice.

In deciding on the appropriate notice of the hearing in this case, we have considered Rule 39.04 of the Interim Rules of Practice and Procedure. That Rule sets out the criteria for determining whether to grant a person party status in a proceeding before the Tribunal. Therefore, the Rule is not directly applicable to the question we have to decide on this motion. However, the criteria established by the Rule can be usefully applied, by analogy, to ascertain those who might have a legitimate interest in receiving notice of the hearing, since such notice would give them the basic information that would enable them to decide whether they should apply for party status. Applying the principles of Rule 39.04, we believe that given the likelihood that members and former members of the Plan would have a genuine interest in the issues raised by this case and the likelihood that some members of that group might be able to make a useful, and perhaps different, contribution to the understanding of those issues, they should be given notice of the hearing before the Tribunal.



We are not persuaded that notice to all members and former members of the Plan is unnecessary at this stage simply because general notice of IOF's application to the Superintendent for approval of a distribution of surplus from the Plan was required and provided at an earlier stage. While in some sense the hearing before the Tribunal can be viewed as a continuation of the application process before the Superintendent, the Tribunal is a separate body that does not simply review decisions or proposed decisions of the Superintendent but hears each case "de novo." In this particular proceeding, there have been developments in the case that suggest to us that a fresh notice, focusing on the hearing before the Tribunal, should be provided. For one thing, over two years have elapsed since the original notice of the surplus withdrawal application was given and it did not refer to the possibility of a hearing before the Tribunal, which has now materialized. For another thing, the position taken by the Superintendent on the application, as evidenced by the Notice of Proposal, may result in some members or former members of the Plan now wishing to become involved – whether as parties or in some other way – even though they were prepared to stand on the sidelines at the earlier stage. It is not just those who might object to the surplus withdrawal application that might be inclined to participate in the hearing in some way, but also those who support the application, who might now feel the need to get actively behind the application given the Superintendent's proposed refusal. This is not to say that we would necessarily take a different view of the desirability of notice of the hearing to members and former members of the Plan had the Superintendent proposed to approve the Surplus Withdrawal Application.

We do not think that IOF's letter of November 20, 2001 makes notice of the hearing to those who received the letter unnecessary. That letter does not indicate the time and place of the hearing nor does it indicate how to contact the Registrar of the Tribunal for further information about the hearing, all of which would be provided by a properly worded notice of hearing.

Since the original notice of IOF's application for surplus withdrawal was given by a mailing to members and former members of the Plan and by newspaper publication, we think that the notice of the hearing before the Tribunal should be given in the same manner.

When this Tribunal requires notice of hearing to be provided to plan members who are not represented by a union, the practice has been for the costs and, generally, for the logistics of effecting notice, once the form is settled, to be assumed by the applicant in the matter if the applicant is the plan sponsor. We see no reason for departing from that practice in this case.

### **Disposition**

At the end of the hearing of the motion on December 7, 2001, we made the following orders:

We order that notice of the hearing in this matter be provided by ordinary mail to all members and former members affected by the windup of the Independent Order of Foresters Fieldworkers' Pension Plan who would be potentially entitled to participate in a distribution of surplus of the plan on its windup effective December 31, 1997. We also order that appropriate newspaper notice of the hearing be provided.

We order that the Applicant bear the costs of the provision of notice of hearing,



subject to any arrangement for the allocation of those costs to the pension plan should the Applicant's application for withdrawal of surplus from the plan be ultimately approved and subject to any order for costs that the Tribunal might order at the end of this proceeding.

DATED at North York this 8th day of January, 2002.

Colin H.H. McNairn,  
Chair of the Panel

Louis Erlichman,  
Member of the Panel

Heather Gavin,  
Member of the Panel

**INDEX NO.:** FST File Number P0116-2000

**PLAN:** Ontario Public Service Pension Plan, Registration Number 208777

**DATE OF DECISION:** February 28, 2002

**PUBLISHED:** Bulletin 11/2 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997 S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services (the "Superintendent") to make an order under Section 87 of the Act respecting a request by Mr. Victor Burns relating to the Ontario Public Service Pension Plan, Registration Number 208777;

**AND IN THE MATTER OF** a Hearing in Accordance with Subsection 89(8) of the Act.

**BETWEEN:**

**ONTARIO PENSION BOARD**  
**Applicant**

- and -

**SUPERINTENDENT OF**  
**FINANCIAL SERVICES OF**  
**ONTARIO**

- and -

**VICTOR BURNS**  
**Respondents**

**BEFORE:**

Ms. Anne Corbett,  
Member of the Tribunal and Chair of the Panel  
Mr. Louis Erlichman,  
Member of the Tribunal and the Panel  
Mr. William Forbes,  
Member of the Tribunal and the Panel

**REPRESENTATIONS BY:**

**For the Ontario Pension Board:**

Mr. Murray Gold  
Ms. Susan Philpott

**For the Superintendent of Financial Services:**

Ms. Frederika Rotter  
Ms. Deborah McPhail

**For Mr. Victor Burns:**

Mr. David J. Jewitt

**HEARING DATES:**

October 15 and 16, 2001  
(North York, Ontario).

**REASONS FOR DECISION**

**Nature of Application**

The Ontario Pension Board (the "Applicant") requested a hearing before the Financial Services Tribunal in respect of the Notice of Proposal issued by the Superintendent of Financial Services ("Superintendent"). The Notice of Proposal indicated that the Superintendent was proposing to order the



Applicant to pay Mr. Victor Burns his full pension benefits, with interest, payable pursuant to Section 24 (11) of Regulation 909 under the *Pension Benefits Act* retroactive to the date of Mr. Burns' retirement from the Ontario Provincial Police. The Applicant takes the position that the Notice of Proposal should be quashed on the basis that Mr. Burns' employment was not terminated with the Ontario Provincial Police but was deemed to be continued, pursuant to Section 80 (3) of the *Act*, as Mr. Burns assumed new employment with the Ottawa-Carleton Police Services Commission on or about the day following his termination of employment with the Ontario Provincial Police and that that new employment was in conjunction with the transfer of part of the police services of the Ontario Provincial Police to the Ottawa-Carleton Police Services Commission.

Both the Superintendent and Mr. Burns contend that Section 80 (3) of the *Act* does not apply to Mr. Burns.

### Facts

Effective February 28, 1997, Mr. Burns terminated his employment with the Ontario Provincial Police. Prior to that date Mr. Burns was employed as a District Inspector with responsibility for seven (7) of thirteen (13) detachments of the Ontario Provincial Police in the Ottawa area.

Effective January 1, 1995, Bill 143, an *Act to Amend Certain Acts related to the Regional Municipality of Ottawa-Carleton and to amend the Education Act in respect of French Language School Boards* was passed. It affected police services in the Ottawa-Carleton region. The former Gloucester, Nepean and Ottawa Police Services were amalgamated into the Ottawa-Carleton Regional Police Services effective January 1,

1997. During the period from December 1996 through to July 1999, there was a divestment of police services from the Ontario Provincial Police to the Ottawa-Carleton Regional Police Services.

In connection with the transfer of police services from the Ontario Provincial Police to the Ottawa-Carleton Regional Police Services a transfer protocol was established which governed the transfer of employees between the police services.

Mr. Burns commenced employment as an Inspector with the Ottawa-Carleton Regional Police Services on March 3, 1997. His new employment arrangements were not governed by the transfer protocol but were the result of arrangements made directly between Mr. Burns and the Chief of the Ottawa-Carleton Regional Police Services. Upon commencing employment with the Ottawa-Carleton Regional Police Services, Mr. Burns became a member in OMERS.

At the time that Mr. Burns terminated his employment with the Ontario Provincial Police he had thirty-three (33) years and seven (7) months pension credit in the Plan and was fifty-five (55) years of age. On the basis of the combination of his age and pension credits, Mr. Burns was eligible for an unreduced immediate pension under the Ontario Provincial Police Early Retirement Benefit provisions in Section 15 (4) of the Plan. Mr. Burns applied for a pension under the Plan. His application was considered by both the Adjudication Committee of the Ontario Pension Board and by the Pension Policy Committee of the Ontario Pension Board, both of which determined that Mr. Burns did not terminate employment with the Ontario Provincial Police for the purpose of the *Pension Benefits Act* but



was deemed by Section 80 (3) of the *Act* to continue employment with a successor employer, the Ottawa-Carleton Regional Police Services.

Mr. Burns retired from the Ottawa-Carleton Regional Police Services on September 30, 1999 and is now in receipt of a pension from both the Plan and OMERS.

### ***Pension Benefits Act***

The relevant provisions of the *Act* are as follows:

**80 (1)** Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employee and becomes a member of a pension plan provided by the successor employer:

- (a) continues to be entitled to the benefits provided under the employee's pension plan in respect of employment in Ontario or a designated province to the effective date of the sale, assignment or disposition without further accrual;
- (b) is entitled to credit in the pension of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining the eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and
- (c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.

**80 (3)** Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this *Act*, not to be terminated by reason of the transaction.

### **Issues**

The parties agreed that the issues to be determined by the Tribunal were as follows:

Was there a sale, assignment or other disposition of all or part of the business or all or part of the assets of the Ontario Provincial Police, Mr. Burns' former employer to the Ottawa-Carleton Regional Police Services?

If the answer to issue (1) is yes, did the Applicant become an employee of the Ottawa-Carleton Regional Police Services in conjunction with the sale, assignment or disposition?

If the answers to issues (1) and (2) are yes, what are the consequences that flow from this transaction under subsections 80 (1) (a), (b) and (c) and 80 (3) of the *Act*.

### **Issues 1 and 2:**

1. Was there a sale, assignment of other disposition of all or part of the business or all or part of the assets of the Ontario Provincial Police, Mr. Burns' former employer to the Ottawa-Carleton Regional Police Services?

If the answer to issue (1) is yes, did the Applicant become an employee of the Ottawa-Carleton Regional Police Services in conjunction with the sale, assignment or disposition?

In argument, all parties acknowledged that there was a disposition of a part of the police services of the Ontario Provincial Police to the Ottawa-Carleton Regional Police Services and accordingly, the only real issue in this case is whether, for the purposes of Section 80 of the *Pension Benefits Act* Mr. Burns became an employee of the Ottawa-Carleton Regional



Police Services "in conjunction with" the partial divestment of the policing services from the Ontario Provincial Police to the Ottawa-Carleton Regional Police Services.

The question of whether or not change of employment is "in conjunction with" the disposition of a business is ultimately a question of fact.

Both the Superintendent and Mr. Burns argued a number of factual circumstances as supporting their position that Mr. Burns' new employment with the Ottawa-Carleton Regional Police Services was not "in conjunction with" the transfer of policing services which was taking place between the Ottawa-Carleton Regional Police Services and the Ontario Provincial Police. In particular, the following facts were asserted:

Prior to his change of employment, Mr. Burns did not work exclusively in the geographic areas that were subject to the transfer of policing services.

Mr. Burns' duties were not eliminated by virtue of the transfer.

Mr. Burns' position would not have been terminated by reason of the transfer. Had he not elected to terminate his employment he would have continued to be employed by the Ontario Provincial Police and even if his position had been eliminated by the transfer the Ontario Provincial Police would have found another position for him.

Mr. Burns was not part of the group that was the subject to the transfer protocol which was negotiated between the two police services.

Mr. Burns' new employment was negotiated directly with the Chief of Police and was not on terms that paralleled any of the terms

that applied to officers' transferring under the transfer protocol.

In considering the question of whether Mr. Burns' new employment was "in conjunction with" the disposition of police services from the Ontario Provincial Police to the Ottawa-Carleton Regional Police Services it is relevant that Mr. Burns' new employment commenced during the period of disposition. Mr. Burns' duties with the Ontario Provincial Police were directly related to the services that were the subject matter of the disposition. Mr. Burns was responsible for seven (7) of thirteen (13) detachments. Of those seven (7) detachments, six (6) were the subject of the disposition. The fact that Mr. Burns' duties prior to his termination of employment were related to the services that were the subject of the disposition together with his transfer of employment taking place during the term of disposition are sufficient for Mr. Burns to become an employee of the Ottawa-Carleton Regional Police Services in conjunction with the sale, assignment or disposition of part of the police services of the Ontario Provincial Police to the Ottawa-Carleton Regional Police Services.

Accordingly, the transaction falls within the description of section 80 (1) and therefore section 80 (3) of the *Act* applies.

It is not necessary for an individual's position to be eliminated by virtue of the disposition for section 80 (3) to apply. Section 80(3) can apply to situations where employees voluntarily leave employment with one employer to commence employment with another if that change of employment is "in conjunction with" the sale, assignment or disposition of the first employer's business. In addition, it does not matter whether the individual negotiates his or



her new employment terms directly with the new employer or is part of arrangements negotiated between employers. It is not uncommon in the purchase and sale of a business for different transfer arrangements to apply to different employees and for senior employees to have individual arrangements. Section 80(3) can also apply in circumstances where the employee's duties with the first employer are different than the duties the employee has with the second employer.

### Issue 3:

1. If the answers to issues (1) and (2) are yes, what are the consequences that flow from this transaction under subsections 80(1) (a), (b) and (c) and 80(3) of the *Act*.

As the Tribunal found in *Horgan and Anand and Superintendent of Financial Services and Ontario Pension Board and OPSEU Pension Trust*, FST Reasons for Decision, (FST File P0120-2000 and P0147-2001), FSCO Pension Bulletin, Volume 11, Issue 1, page 149, subsection 80 (3) of the *Act* is unambiguous. Where a transaction described in Section 80 (1) takes place, the employment of the employee who became employed by the successor employer in conjunction with the transaction is deemed for the purposes of the *Act* not to be terminated by reason of the transaction.

The effect of section 80 (3) is that Mr. Burns was not entitled to commence receiving a pension on February 28, 1997, the date he ceased his employment with the Ontario Provincial Police.

### Order

For the reasons noted above, the Superintendent's Notice of Proposal dated July 12, 2000, is quashed.

DATED at North York, Ontario, this 28th day of February, 2002.

Anne Corbett,  
Member of the Tribunal and  
Chair of the Panel

William M. Forbes,  
Member of the Tribunal and  
Member of the Panel

Louis Erlichman,  
Member of the Tribunal and  
Member of the Panel

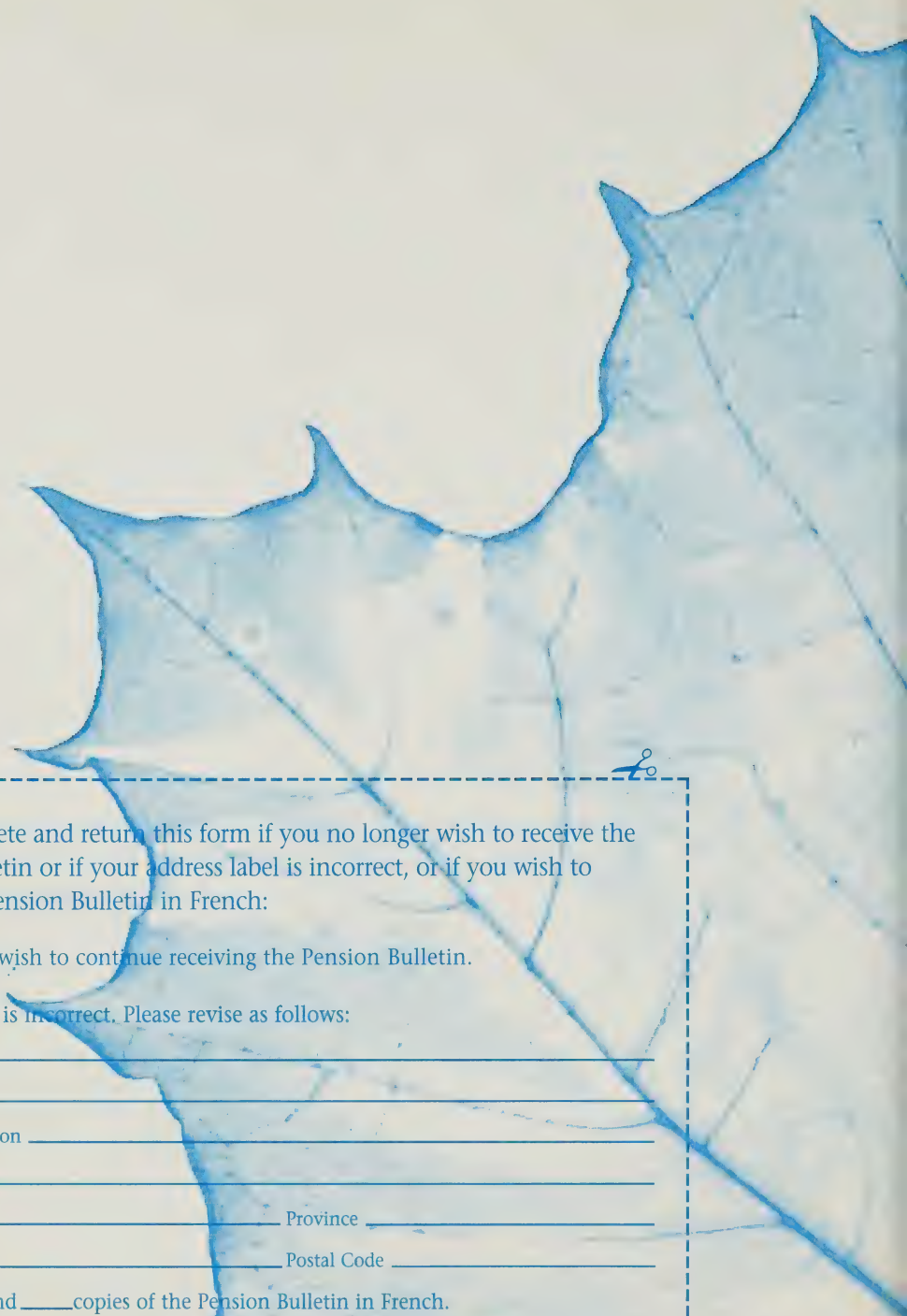


## NOTES



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HERE

The Editor, *Pension Bulletin*  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
Box 85  
North York, ON  
M2N 6L9



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Thank you for your assistance with the Mailing List Review.

# PENSION BULLETIN

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SEPTEMBER 2002 • VOLUME 11, ISSUE 3

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*The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.*

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## GENERAL ANNOUNCEMENTS

### **Appointment of Bryan Davies as Chief Executive Officer and Superintendent of Financial Services, FSCO**

July 15, 2002

Dear FSCO Stakeholder:

Today the Ontario Deputy Minister of Finance, Bob Christie, announced the appointment of Bryan Davies as the new Chief Executive Officer and Superintendent of Financial Services, Financial Services Commission of Ontario (FSCO). The appointment is effective September 3, 2002.

I would like to welcome Mr. Davies to FSCO and express my confidence in his leadership as FSCO moves forward in fulfilling its mandate to protect the public interest and enhance public confidence in the regulated sectors by providing regulatory services that protect consumers and support a healthy and competitive financial services industry.

Most recently, Mr. Davies has been the Senior Vice President of Regulatory Affairs at the Royal Bank of Canada. Prior to that he spent several years at the University of Toronto as Senior Vice President of Business Affairs and Chief Administrative Officer.

Mr. Davies also has extensive senior experience in the public sector, including Deputy Treasurer and Deputy Minister of Economics at the former Ontario Ministry of Treasury and Economics as well as Deputy Minister at the former Ontario Ministry of Financial Institutions. He is an exceptional choice to lead FSCO.

I will remain as the acting Chief Executive Officer and Superintendent, Financial Services until Mr. Davies assumes his position in September 2002.

Sincerely,

Philip Howell  
Chief Executive Officer and  
Superintendent of Financial Services (Acting)





## Contacts for Plan Specific Enquiries

Contact Name	Title	Phone Number	Allocation Alpha Range
Jaen Pringi	Sr. Pension Officer	416-226-7826	
Gulnar Chandani	Pension Officer	416-226-7770	#'s - Associated
Penny McIlraith	Pension Officer	416-226-7822	Associates - Bulk
Tim Thomson	Pension Officer	416-226-7829	Bull - Cem
Irene Mook Sang	Pension Officer	416-226-7824	Cen - Cz
Kathy Carmosino	Pension Officer	416-226-7823	I - King
Preethi Anthonypillai	Pension Officer	416-226-7812	Kinh - Mark
Gino Marandola	Sr. Pension Officer	416-226-7820	
Calvin Andrews	Pension Officer	416-226-7768	Gko - H
Jeff Chuchman	Pension Officer	416-226-7807	D - Em
John Graham	Pension Officer	416-226-7774	Marl - Nes
Julina Lam	Pension Officer	416-226-7815	Net - Pep
Anna Vani	Pension Officer	416-226-7833	Peq - Rob
Larry Martello	Pension Officer	416-226-7821	
Rosemin Jiwa Jutha	Sr. Pension Officer	416-226-7816	
John Khing Shan	Pension Officer	416-226-7237	En - Gkn
Peter Dunlop	Pension Officer	416-226-7814	Roc - Sons
Hae-Jin Kim	Pension Officer	416-226-7876	Sont - The Drop
David Allan	Pension Officer	416-226-7803	The Droq - Unicorp
Mark Lucyk	Pension Officer	416-226-7781	Unicorp - Z
Robin Gray	Pension Officer	416-226-7855	



## HEARINGS/COURT MATTERS

The information set out below is current to July 23, 2002.

### Enforcement Matters

#### i. Canadian Corporation Creation Center (CCCC)

Charges under the *Pension Benefits Act* (the "Act") were laid against the CCCC Pension Plan administrator, the individual trustees, CCCC and related companies on September 12, 2001. The charges relate to a scheme whereby locked in accounts were assigned to the defendant companies in return for the promise to extend a loan to the locked in account holder. A first appearance occurred on October 9, 2001. A second appearance occurred on December 6, 2001, at which time one of the individual trustees pleaded guilty to a charge of failing to administer the CCCC Pension Plan in accordance with Act. A fine of \$5,000 inclusive of victim surcharge was levied. The charges against the other defendants were withdrawn on June 17, 2002.

#### ii. Visentin Steel Fabricators Ltd.

Charges were laid for failing to file annual information returns. The first appearance occurred on August 21, 2001. The matter was subsequently adjourned and on February 12, 2002, a trial date was set for April 12, 2002. On April 12, 2002, the defendant pleaded guilty to three counts relating to filings for periods prior to the effective date of the wind up of the plan. A total fine of \$3,600 was levied and a probation order requiring that the defendant file the outstanding documents was imposed.

#### iii. Bimeda-MTC Animal Health Inc./ Bimeda-MTC Sante Animale Inc.

Charges were laid in respect of two pension plans administered by Bimeda. In one pension

plan, Bimeda was charged for failing to file a financial statement. In respect of the other plan, Bimeda was charged for failing to file financial statements for two consecutive years. The first appearance for the charges occurred on March 5, 2002. The matter was subsequently adjourned and on May 31, 2002, the charges were withdrawn.

#### iv. Dubreuil Forest Products Limited

Charges were laid for failing to file a financial statement. The first appearance for the charges occurred on March 5, 2002. The matter was subsequently adjourned to August 27, 2002.

#### v. Pass & Seymour Canada, Inc.

Charges were laid for failing to file a financial statement and an annual information return. The first appearance in Court was on March 5, 2002. The matter was adjourned to April 16, 2002. On April 16, 2002, Pass & Seymour pleaded guilty to all charges and a total fine of \$1,500 was levied on all charges.

#### vi. Pacific Paving Limited

A charge was laid for failing to file a financial statement. The first appearance in Court was on March 5, 2002. The matter was subsequently adjourned and on May 31, 2002, Pacific Paving pleaded guilty to the charge and a total fine of \$100 was levied.

#### vii. Mimik Industries Inc.

Charges were laid against the employer, Mimik Industries Inc., and against an officer of the employer for failing to remit the required contributions to the pension plan. The first appearance in Court was on June 13, 2002, at which time the matter was adjourned to July 31, 2002.



#### **viii. Servifood Ltd.**

Charges were laid against the employer for failing to file an amendment, PBGF assessment certificates and an annual information return. The first appearance in Court was on June 13, 2002, at which time the Court determined that service had not been effected against the defendants.

#### **ix. Glenex Industries Inc.**

Charges were laid for failing to file financial statements for five consecutive years. The first appearance in Court was on June 28, 2002. Glenex pleaded guilty to all the charges and a total fine of \$3,700 was levied.

#### **x. Rellok Ltd.**

Charges were laid for failing to pay the filing fees for annual information return for two consecutive years. The first appearance in Court was on June 28, 2002, at which time the charges were adjourned to July 30, 2002.

### **Court Matters**

#### **i. Moisan et al. v. Pension Commission of Ontario et al.**

In August 1996, a group of former members of the Retirement Income Plan for Employees of Kidd Creek Mines commenced a civil action against the Pension Commission of Ontario (PCO), Falconbridge Limited, and Sedgwick Limited, claiming \$11.4 M in damages. The plaintiffs claimed that the PCO's consent to a wind up and surplus withdrawal by the employer in 1986 was void because no notice was provided to the members. The plaintiffs also claimed that the employer Kidd Creek and its actuary deliberately undervalued liabilities for the wind up so as to maximize the surplus, and that Kidd Creek and its actuary encouraged members to take the Kidd Creek Retirement Savings Program option rather than the deferred annuity option.

The action was certified as a class action in 1999. The claim against the PCO was amended to eliminate the claim for damages and to instead claim a declaration that the PCO's consent was void.

Settlement negotiations on the eve of trial resulted in a proposed settlement reached in March of 2002. On May 28, 2002, the Superior Court of Justice approved the settlement and the proposed allocation of funds. The settlement involves Falconbridge paying the sum of \$5.0 M over four years and Sedgwick paying the sum of \$700,000 immediately.

#### **ii. Monsanto Canada Inc.**

On April 29 and 30, 2002, the Court of Appeal heard the appeal of the Divisional Court's decision brought by Monsanto Canada Inc., the Association of Canadian Pension Management, and National Trust Company. The issues are



whether the Act compels a distribution of surplus on partial wind up and whether the doctrine of legitimate expectation applies. The Divisional Court had unanimously allowed the Superintendent's appeal of the Financial Services Tribunal's majority decision, which held that the Act does not compel a distribution of surplus on partial wind up and that the doctrine of legitimate expectation applied against the Superintendent.

The Court of Appeal reserved its decision.

### **iii. Ontario Teachers' Pension Plan (Anne Stairs)**

On May 24, 2002, the Divisional Court heard an appeal by Anne Stairs against the Financial Services Tribunal's decision which directed the Superintendent not to carry out a proposal to order the Teachers' Pension Plan Board to pay certain survivor benefits to Ms. Stairs, a former spouse of the plan member who died before reaching retirement age. The Tribunal held that a separation agreement awarding Ms. Stairs an interest in the plan member's pension benefits (including death benefits) could not be enforced under the Act, as death benefits were not property and the plan member's spouse at the time of his death was not a party to the separation agreement.

The Divisional Court released its decision on June 18, 2002. The appeal was allowed. The Court found that death benefits were property that could be assigned and that subsection 48(13) clearly gave Ms. Stairs an interest in the death benefits. The standard of review was reasonableness. However, the standard was correctness when the Tribunal interpreted family law or the common law.

The parties will return to argue the amount of

Ms. Stairs entitlement before the Divisional Court on September 31, 2002.

### **iv. Dustbane Enterprises Limited**

On June 7, 2002, the Divisional Court heard an appeal by Dustbane Enterprises Limited with respect to a Financial Services Tribunal decision. The case involves a partial wind up of the Pension Plan for Employees of Dustbane Enterprises Limited whereby Dustbane's distributors and their employees were removed from the plan. The Tribunal's majority decision held that the plan was not a multi-employer pension plan because there was no agreement on the part of the distributors to contribute as employers to the plan, and that Dustbane and not its distributors was responsible for a deficit that had arisen on partial wind up. The Tribunal majority held that Dustbane was the employer of the distributors and their employees for the purposes of the Act. The Tribunal dissent held that the plan was a multi-employer pension plan based on an agreement implied through conduct in remitting contributions to the plan and that the distributors were therefore responsible for the deficit.

The Tribunal unanimously held that any delay could not excuse payment of the deficit, since plan members' rights under the Act could not be compromised.

The Divisional Court dismissed the appeal on June 7, 2002, finding that Dustbane was estopped from claiming that it was a multi-employer pension plan after years of holding itself out as a single employer plan. The Court found that the Tribunal majority acted reasonably in interpreting the term "employer" with plan members' rights in mind, and that the Tribunal panel as a whole acted reasonably in finding that delay could not compromise members' rights under the Act.





## LEGISLATIVE CHANGES/REGULATORY POLICIES

### Ontario Regulation 202/02

Regulation 202/02 has been made under the *Pension Benefits Act* to implement the restructuring of the pension plans of Algoma Steel Inc.

A copy of Ontario Regulation 202/02 is available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca)

### Ontario Regulation 203/02

Effective June 28, 2002, Regulation 909 under the *Pension Benefits Act* was amended by Ontario Regulation 203/02 to prevent any additional employers from electing to have their pension plans treated as qualifying plans for the purposes of Section 5.1 of the Regulation.

A copy of this amendment to Ontario Regulation 909 is available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca)





## Financial Services Commission of Ontario Commission des services financiers de l'Ontario

<b>SECTION:</b>	Benefits
<b>INDEX NO.:</b>	B100-206
<b>TITLE:</b>	Pregnancy, Parental and Emergency Leave
<b>APPROVED BY:</b>	Superintendent of Financial Services
<b>PUBLISHED:</b>	FSCO website (May 2002)
<b>EFFECTIVE DATE:</b>	May 1, 2002
<b>REPLACES:</b>	B100-200, B100-202, B100-204, B100-205

---

This policy replaces B100-200, B100-202, B100-204 and B100-205 as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

Section 51 of the *Employment Standards Act, 2000*, S.O. 2000, c. 41 ("ESA") sets out requirements in situations where a member of a pension plan is absent from employment as a result of pregnancy, parental or emergency leave, as defined under the ESA.

For pension plans where members are not required to make contributions under the plan, the effect of the ESA requirements is that a member who takes such leave continues to participate in and accrue benefits under the pension plan throughout the term of the leave, and the employer's contributions respecting the member must continue to be made during that time, unless the member elects in writing not to

participate in the pension plan for the term of the leave.

For pension plans where members are required to make contributions under the plan, the effect of the ESA requirements is that a member who takes such leave continues to participate in and accrue benefits under the pension plan throughout the term of the leave, and the employer's contributions respecting the member must continue to be made during that time, unless the member gives the employer written notice that the member does not intend to pay his or her contributions related to the term of the leave or elects in writing not to participate in the pension plan for the term of the leave.

Where a member of a contributory plan does not elect to stop making contributions to the plan during pregnancy, parental or emergency leave, the manner in which the member's contributions are to be made should be set out in the plan text. This could include periodic payments during the leave, a lump sum payment or some other arrangement that the plan sponsor wishes to implement.



The plan administrator should provide sufficient information for members to make informed decisions about pregnancy, parental or emergency leave. This information might include scenarios which clearly illustrate the possible results of continuing or not continuing to participate in the plan during the term of the leave. The administrator should also provide information about the method for making contributions during the leave.

The employer's obligation to continue making contributions respecting the member cannot be made conditional on the member returning to work after the leave. The continuation of employer contributions is an unconditional right.

The requirements respecting pregnancy, parental and emergency leave are set out in Part XIV (sections 45 to 53) of the ESA. Plan administrators and others involved in the management of employee benefits should familiarize themselves with the general requirements of the ESA.

Enquiries regarding these specific requirements should be directed to the Employment Practices Branch, Ministry of Labour, 9th Floor, 400 University Avenue, Toronto ON M7A 1T7, telephone (416) 326-2450 or fax (416) 314-7061.

Where the provisions of a pension plan are inconsistent with the pregnancy, parental and emergency leave provisions of the ESA, the plan should be amended to conform with the ESA requirements. In all cases, however, the ESA requirements will apply whether or not the plan is so amended.



## **SUPERINTENDENT OF FINANCIAL SERVICES**

### **Appointment of Administrators – Section 71 of the PBA**

1. London Life Insurance Company as the Administrator of the Canadian Sports and Fitness Employees Pension Plan, (Registration No. 452870), effective immediately.  
DATED at Toronto, Ontario, this 14th day of May, 2002.
2. Sun Life Assurance Company of Canada as the Administrator of the Ward Press Limited Employees Pension Plan, (Registration No. 583187), effective immediately.  
DATED at Toronto, Ontario, this 10th day of May, 2002.
3. Deloitte & Touche Inc. as the Administrator of the Fantom Technologies Inc. Salaried Pension Plan, (Registration No. 910810), effective immediately.  
DATED at Toronto, Ontario, this 23rd day of April, 2002.
4. Deloitte & Touche Inc. as the Administrator of the Fantom Technologies Inc. Hourly Pension Plan, (Registration No. 348995), effective immediately.  
DATED at Toronto, Ontario, this 23rd day of April, 2002.
5. Canada Life Assurance Company as the Administrator of the 174676 Canada Inc. Employees Pension Plan, (Registration No. 683201), effective immediately.  
DATED at Toronto, Ontario, this 11th day of April, 2002.
6. Arthur Andersen Inc. as the Administrator of the Maksteel Hamilton – Div. of Maksteel Inc. Hourly Employees Pension Plan, (Registration No. 1059146), effective immediately.  
DATED at Toronto, Ontario, this 8th day of April, 2002.
7. London Life Insurance Company as the Administrator of the Everest & Jennings Employees Pension Plan, (Registration No. 527671), effective immediately.  
DATED at Toronto, Ontario, this 6th day of March, 2002.
8. Deloitte & Touche Inc. as the Administrator of the Outboard Marine Corp. of Canada Ltd. Pension Plan for Employees, (Registration No. 232967), effective immediately.  
DATED at Toronto, Ontario, this 1st day of February, 2002.
9. Deloitte & Touche Inc. as the Administrator of the Outboard Marine Corp. of Canada Ltd. Retirement Plan for Employees, (Registration No. 232975), effective immediately.  
DATED at Toronto, Ontario, this 1st day of February, 2002.
10. London Life Insurance Company as the Administrator of the Northern Power Control Systems Ltd. Registered Pension Plan 55606, (Registration No. 978486), effective immediately.  
DATED at Toronto, Ontario, this 28th day of January, 2002.
11. Manufacturers Life Insurance Company as the Administrator of the Bracknell Corporation Plan for Salaried & Non-Union Hourly Employees, (Registration No. 956789), effective immediately.  
DATED at Toronto, Ontario, this 25th day of January, 2002.



12. London Life Insurance Company as the Administrator of the Denton Technologies Inc. Retirement Plan for Employees, (Registration No. 1015171), effective immediately.  
DATED at Toronto, Ontario, this 21st day of January, 2002.
13. Standard Life Assurance Company as the Administrator of the Bridge Information Systems Canada Inc. Pension Plan for Employees, (Registration No. 368720), effective immediately.  
DATED at Toronto, Ontario, this 18th day of January, 2002.
14. Canada Life Assurance Company as the Administrator of the Pelee Electric Delta Revised Pension Plan for Employees, (Registration No. 363218), effective immediately.  
DATED at Toronto, Ontario, this 10th day of January, 2002.
15. Sun Life Assurance Company of Canada as the Administrator of the Binks Sames Canada Ltd. Employees Pension Plan, (Registration No. 578120), effective immediately.  
DATED at Toronto, Ontario, this 12th day of November, 2001.
16. Canada Life Assurance Company as the Administrator of the Bono General Construction Pension Plan for Employees, (Registration No. 499608), effective immediately.  
DATED at Toronto, Ontario, this 12th day September, 2001.



## Notices of Proposal to Make and Order

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of the **Pension Plan for Salaried Employees of MTD Fasteners 1995 Ltd., Registration No. 689109;**

**TO:** **MTD Products Limited**  
97 Kent Avenue  
P.O. Box 1386  
Kitchener ON N2G 4J1

**Attention:** Mr. John Norman  
**Applicant and Employer**

### NOTICE OF PROPOSAL

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the Act, consenting to the payment out of the Pension Plan for Salaried Employees of MTD Fasteners 1995 Ltd., Registration No. 689109 (the "Plan"), to MTD Products Limited in the amount of \$31,109.00, as at May 31, 2001, plus investment earnings thereon to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. MTD Products Limited is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective May 15, 1996.

3. After payment of all entitlements under the pension plan, assets in the amount of \$31,109.00 remained in the pension fund, as at May 31, 2001.
4. The Plan provides for the refund to the Company of expense payments made directly by the Company.
5. Evidence of expense payments made directly by the Company in excess of \$31,109, as at May 31, 2001, have been submitted to the Financial Services Commission of Ontario.
6. The application appears to comply with section 78(4) of the Act.
7. Such further and other reasons as come to my attention.

In accordance with subsection 105(1) of the Act, an extension of the time limit under subsection 78(4) has been given.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 13th day of February, 2002.

K. David Gordon

Deputy Superintendent, Pension Division

c.c. Mr. Stephen A. Eadie, Robertson,  
Eadie & Associates



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Employees of Schrader Automotive (Canada) Inc., Registration No. 0923896;**

**TO:** **Schrader Automotive (Canada) Inc.**  
1751 Lake Cook Road  
Suite 450  
Deerfield, Illinois, U.S.A.  
60015

**Attention:** John Foote  
Group Vice President  
**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Employees of Schrader Automotive (Canada) Inc., Registration No. 0923896 (the "Plan"), to Schrader Automotive (Canada) Inc. in the amount of \$99,218, as at December 31, 1999, plus interest and other adjustments.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Schrader Automotive (Canada) Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 31, 1999.
3. As at August 31, 1996, the surplus in the Plan was estimated at \$157,414.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) 80% to the Employer; and
  - b) 20% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 80% of the surplus in the Plan (after adding investment earnings and deducting the expenses related to the wind up of the Plan).
7. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 21st day of February, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
c.c. John Marks, William M. Mercer

<sup>1</sup>NOTE - PURSUANT TO section 112 of the Act, any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan of Nickel Development Institute for M.O. Pearce, Registration No. 969220**;

**TO:** **Nickel Development Institute**  
214 King St. West  
Suite 510e  
Toronto ON M5H 3S6

**Attention:** Mr. James Lilly  
Vice President and Treasurer  
**Applicant and Employer**

#### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Pension Plan of Nickel Development Institute for M.O. Pearce, Registration No. 969220 (the "Plan"), to Nickel Development Institute in the amount of \$45,198, as at April 1, 2001, plus 100 percent of investment earnings on the surplus to the date of payment less 100 percent of expenses relating to the wind up of the Pension Plan of Nickel Development Institute for M.O. Pearce.

#### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Nickel Development Institute is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective April 1, 2001.
3. As at April 1, 2001, the surplus in the Plan was estimated at \$45,198.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and M.O. Pearce, the sole member of the Plan, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed 100% to the Employer.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (after adding 100% of investment earnings and deducting 100% of the expenses related to the wind up of the Plan) to the Employer.
7. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 12th day of March, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
c.c. Karen A. Zilli, William M. Mercer Limited

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");  
**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Pension Plan for Unionized Employees of Northern Globe Building Materials (Thorold Division)**, Registration Number 680405 (formerly C-104311) (the "Plan");

**TO:** **Arthur Andersen Inc.**  
4 King Street West  
Suite 1050  
Toronto ON M5H 1B6

**Attention:** Mr. Lawrence A. Contant  
**Administrator**

**AND TO:** **Striker Paper Canada, Inc.**  
100 Ormond Street South  
P.O. Box 10,  
Thorold ON L2V 3Y7

**Attention:** Ms. Patricia Gough, Manager  
**Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in respect of the Plan under section 69(1) of the PBA.

#### **PROPOSED ORDER:**

The Pension Plan for Unionized Employees of Northern Globe Building Materials, Inc. (Thorold Division), Registration No. 680405 (formerly C-104311), be wound up in whole for those members of the Plan who ceased to be employed effective between November 30, 1998 and February 22, 1999.

#### **REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the PBA.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer, pursuant to clause 69(1)(d) of the PBA.
3. All or significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the PBA.
4. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

Your written notice must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the date of mailing.



**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll-free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**THE ADMINISTRATOR IS REQUIRED** pursuant to section 89(5) of the PBA, to transmit a copy of this Notice of Proposal to the following persons:

**Communications, Energy and  
Paper Workers Union of  
Canada**

5890 Aspen Court  
Niagara Falls ON L2G 7V3

**Attention:** Mr. Michael Lambert  
National Representative  
**Union**

**BDO Dunwoody Limited**

Royal Bank Plaza  
P.O. Box 33  
Toronto ON M5J 2J9

**Attention:** Mr. Mark Chow  
**Receiver and Trustee in  
Bankruptcy for Striker Paper  
Canada, Inc.**

DATED at North York, Ontario,  
April 25th, 2002.

K. David Gordon  
Deputy Superintendent, Pensions



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make an  
Order under section 69 of the Act relating to the  
**Molson Canada Pension Plan for Hourly  
Employees in Ontario and Atlantic  
Canada, Registration Number 0334094  
(the "Plan")**;

**TO:** **MOLSON CANADA**  
33 Carlingview Drive  
Etobicoke, Ontario  
M9W 5E4

**Attention:** **Rose Vettese**  
Manager, Pension and Benefits  
**Employer and Administrator  
of the Molson Canada  
Pension Plan for Hourly  
Employees in Ontario and  
Atlantic Canada, Registration  
Number 0334094**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in respect  
of the Plan under section 69 of the Act.

### **PROPOSED ORDER:**

The Molson Canada Pension Plan for Hourly  
Employees in Ontario and Atlantic Canada,  
Registration Number 0334094 (the "Plan"), be  
wound up in part effective August 31, 2000, in  
relation to those members and former members

of the Plan who were employed by Molson Inc.,  
carrying on business as Molson Canada,  
formerly Molson Inc., carrying on business as  
Molson Breweries (the "Employer") and who  
ceased to be employed by the Employer effective  
between October 6, 1999 and August 31, 2000,  
or the date the Plan member employed by the  
Employer ceased employment, whichever is  
later, as a result of the closure of the brewery  
plant in Barrie, Ontario.

### **REASONS FOR THE ORDER:**

1. Molson Inc., carrying on business as Molson  
Canada, formerly Molson Inc., carrying  
on business as Molson Breweries, is the  
employer and administrator of the Plan.
2. All or a significant portion of the business  
carried on by the Employer at the brewery  
plant in Barrie, Ontario, was discontinued  
between October 6, 1999 and August 31,  
2000, within the meaning of clause 69(1)(e)  
of the Act.
3. Such further and other reasons as may come  
to my attention.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "Tribunal"),  
pursuant to s. 89(6) of the Act. To request a  
hearing, you must deliver to the Tribunal a writ-  
ten notice that you require a hearing, within  
thirty (30) days after this Notice of Proposal is  
served on you.<sup>1</sup>

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the date of mailing.



Your written notice must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll-free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**THE ADMINISTRATOR IS REQUIRED**

pursuant to subsection 89(5) of the Act, to transmit a copy of this Notice of Proposal to the following persons: all members and former members of the Plan who were employed by the Employer and who ceased to be employed by the Employer effective between October 6, 1999 and August 31, 2000.

DATED at Toronto, Ontario, this 5th day of May, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
(or delegated signatory)



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make an  
Order under section 69 of the Act relating to the  
**Molson Breweries Pension Plan for  
Operating Engineers, Registration  
Number 0390666 (the "Plan");**

**TO: MOLSON INC. and CARLING  
O'KEEFE BREWERIES OF  
CANADA LIMITED, carrying  
on business in partnership as  
MOLSON CANADA ("MOLSON  
CANADA")**

33 Carlingview Drive  
Etobicoke, Ontario  
M9W 5E4

**Attention:** Rose Vettese  
Manager, Pension and Benefits  
**Employer and Administrator  
of the Molson Breweries  
Pension Plan for Operating  
Engineers, Registration  
Number 0390666**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in respect  
of the Plan under section 69 of the Act.

### **PROPOSED ORDER:**

The Molson Breweries Pension Plan for  
Operating Engineers, Registration Number  
0390666 (the "Plan"), be wound up in part

effective August 31, 2000, in relation to those  
members and former members of the Plan who  
were employed by Molson Inc. and Carling  
O'Keefe Breweries of Canada Limited, carrying  
on business in partnership as Molson Canada  
(the "Employer," or "Molson Canada") and who  
ceased to be employed by Molson Canada effective  
between October 6, 1999 and August 31,  
2000, or the date the Plan member employed by  
Molson Canada ceased employment, whichever  
is later, as a result of the closure of the brewery  
plant in Barrie, Ontario.

### **REASONS FOR THE ORDER:**

1. Molson Canada is the employer and  
administrator of the Plan.
2. All or a significant portion of the business  
carried on by Molson Canada at the brewery  
plant in Barrie, Ontario, was discontinued  
between October 6, 1999 and August 31,  
2000, within the meaning of clause 69(1)(e)  
of the Act.
3. Such further and other reasons as may come  
to my attention.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "Tribunal"),  
pursuant to s. 89(6) of the Act. To request a  
hearing, you must deliver to the Tribunal a written  
notice that you require a hearing, within  
thirty (30) days after this Notice of Proposal is  
served on you.<sup>1</sup>

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the date of mailing.



Your written notice must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll-free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**THE ADMINISTRATOR IS REQUIRED** pursuant to subsection 89(5) of the Act, to transmit a copy of this Notice of Proposal to the following persons: all members and former members of the Plan who were employed by Molson Canada and who ceased to be employed by Molson Canada effective between October 6, 1999 and August 31, 2000.

DATED at Toronto, Ontario, this 5th day of May, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
(or delegated signatory)



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086 (the "Plan")**;

**TO: MOLSON INC. and CARLING O'KEEFE BREWERIES OF CANADA LIMITED, carrying on business in partnership as MOLSON CANADA ("MOLSON CANADA")**

33 Carlingview Drive  
Etobicoke, Ontario  
M9W 5E4

**Attention:** Rose Vettese  
Manager, Pension and Benefits  
**Employer and Administrator of the Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in respect of the Plan under section 69 of the Act.

### **PROPOSED ORDER:**

The Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086 (the "Plan"), be wound up in part effective August 31, 2000, in relation to those members and former members of the Plan who were employed

by Molson Inc. and Carling O'Keefe Breweries of Canada Limited, carrying on business in partnership as Molson Canada (the "Employer," or "Molson Canada") and who ceased to be employed by Molson Canada effective between October 6, 1999 and August 31, 2000, or the date the Plan member employed by Molson Canada ceased employment, whichever is later, as a result of the closure of the brewery plant in Barrie, Ontario.

### **REASONS FOR THE ORDER:**

1. Molson Canada is the employer and administrator of the Plan.
2. All or a significant portion of the business carried on by Molson Canada at the brewery plant in Barrie, Ontario, was discontinued between October 6, 1999 and August 31, 2000, within the meaning of clause 69(1)(e) of the Act.
3. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

Your written notice must be delivered to:

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5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the date of mailing.



**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**THE ADMINISTRATOR IS REQUIRED** pursuant to subsection 89(5) of the Act to transmit a copy of this Notice of Proposal to the following persons: all members and former members of the Plan who were employed by Molson Canada and who ceased to be employed by Molson Canada effective between October 6, 1999 and August 31, 2000.

DATED at Toronto, Ontario, this 5th day of May, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
(or delegated signatory)



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086 (the "Plan")**;

**TO:** **MOLSON INC. and CARLING O'KEEFE BREWERIES OF CANADA LIMITED, carrying on business in partnership as MOLSON CANADA ("MOLSON CANADA")**  
33 Carlingview Drive  
Etobicoke, Ontario  
M9W 5E4

**Attention:** Rose Vettese  
Manager, Pension and Benefits  
**Employer and Administrator of the Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in respect of the Plan under section 69 of the Act.

### **PROPOSED ORDER:**

The Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086 (the "Plan"), be wound up in part effective December 31, 1997, in relation to those members and former members of the Plan who were employed by Molson Inc. and Carling O'Keefe Breweries of Canada Limited, carrying on business in partnership as Molson Canada (the "Employer," or "Molson Canada") and who

ceased to be employed by Molson Canada effective between December 18, 1995 and December 31, 1997 or the date the Plan member employed by Molson Canada ceased employment, whichever is later, as a result of:

- i) the reorganization of the business of Molson Canada; or
- ii) the discontinuance of all or a significant portion of the business carried on by Molson Canada at one or more specific locations.

### **REASONS FOR THE ORDER:**

1. Molson Canada is the employer and administrator of the Plan.
2. A significant number of members of the Plan ceased to be employed by Molson Canada as a result of the reorganization of the business of Molson Canada effective between December 19, 1995 and December 31, 1997, within the meaning of clause 69(1)(d) of the Act. This reorganization included: the decentralization measures taken in Ontario in 1995 and 1996; the decentralization measures taken in Quebec in 1996 and 1997; and the closure of the Winnipeg, Manitoba brewery in 1997.
3. All or a significant portion of the business carried on by Molson Canada at one or more specific locations was discontinued between December 19, 1995 and December 31, 1997, within the meaning of clause 69(1)(e) of the Act.
4. Such further and other reasons as may come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

Your written notice must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll-free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**THE ADMINISTRATOR IS REQUIRED** pursuant to subsection 89(5) of the Act to transmit a copy of this Notice of Proposal to the following persons: all members and former members of the Plan who were employed by Molson Canada and who ceased to be employed by Molson Canada effective between December 19, 1995 and December 31, 1997.

DATED at Toronto, Ontario, this 5th day of May, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
(or delegated signatory)

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the date of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086 (the "Plan")**;

**TO:** **MOLSON INC. and CARLING O'KEEFE BREWERIES OF CANADA LIMITED, carrying on business in partnership as MOLSON CANADA ("MOLSON CANADA")**  
33 Carlingview Drive  
Etobicoke, Ontario  
M9W 5E4

**Attention:** Rose Vettese  
Manager, Pension and Benefits  
**Employer and Administrator of the Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** in respect of the Plan under section 69 of the Act.

### **PROPOSED ORDER:**

The Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086 (the "Plan"), be wound up in part effective May 23, 2001, in relation to those members and former members of the Plan who were employed by Molson Inc. and Carling O'Keefe Breweries of

Canada Limited, carrying on business as Molson Canada (the "Employer," or "Molson Canada") and who ceased to be employed by Molson Canada effective between September 8, 1999 and May 23, 2001, or the date the Plan member employed by Molson Canada ceased employment, whichever is later, as a result of the reorganization of the business of the Molson Canada.

### **REASONS FOR THE ORDER:**

1. Molson Canada is the employer and administrator of the Plan.
2. A significant number of members of the Plan ceased to be employed by Molson Canada as a result of the reorganization of the business of Molson Canada within the meaning of clause 69(1)(d) of the Act, effective between September 8, 1999 and May 23, 2001.
3. All or a significant portion of the business carried on by Molson Canada at one or more specific locations was discontinued between September 8, 1999 and May 23, 2001, within the meaning of clause 69(1)(e) of the Act.
4. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the date of mailing.



Your written notice must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll-free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**THE ADMINISTRATOR IS REQUIRED** pursuant to subsection 89(5) of the Act to transmit a copy of this Notice of Proposal to the following persons: all members and former members of the Plan who were employed by Molson Canada and who ceased to be employed by Molson Canada effective between September 8, 1999 and May 23, 2001.

DATED at Toronto, Ontario, this 5th day of May, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
(or delegated signatory)



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Salaried Employees of Newman Steel Ltd. and its Associated Companies, Registration No. 283481;**

**TO:** **PricewaterhouseCoopers Inc.**  
c/o Blake, Cassels & Graydon LLP  
Box 25, Commerce Court West  
199 Bay Street  
Toronto ON M5L 1A9

**Attention:** Elizabeth Boyd  
Counsel to  
PricewaterhouseCoopers Inc.  
Reesha Hosein  
Counsel to  
PricewaterhouseCoopers Inc.  
**Applicant and receiver  
and manager of Newman  
Steel Ltd.**

**KPMG Inc.**  
Suite 3300, Commerce Court West  
P.O. Box 31 Stn. Commerce Court  
Toronto ON M5L 1B2

**Attention:** Michael Creber  
Senior Vice-President  
**Plan Administrator**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Salaried Employees of Newman Steel Ltd. and its Associated Companies, Registration No. 283481 (the

"Plan"), to PricewaterhouseCoopers Inc. in the amount of \$206,400 (representing 40% of the surplus of \$516,000 determined to be in the Plan as at November 4, 1991), plus the gains (net losses) thereon from November 4, 1991 to the date of payment, less 40% of all expenses incurred in connection with the administration of the wind up of the Plan, including, without limitation, 40% of the reasonable legal and actuarial fees and expenses of those Plan members included in the surplus sharing group who are represented by Anthony Wellenreiter of the law firm Wellenreiter & Wellenreiter.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Sharing Agreement described in paragraph #5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid purchased, or otherwise provided for.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Newman Steel Ltd., the company which sponsored the Plan, was placed in receivership on October 2, 1991. PricewaterhouseCoopers Inc. was appointed receiver and manager of Newman Steel Ltd. on that date.
2. Newman Steel Ltd. was adjudged bankrupt on December 5, 1991, with Arthur Andersen Inc. being appointed trustee in bankruptcy. Arthur Andersen Inc., who was discharged as trustee in bankruptcy on April 24, 1997, has stated that it has no interest in the surplus assets of the Plan.
3. The Plan was wound up, effective November 4, 1991.



4. As at November 4, 1991, the surplus in the Plan was estimated at \$516,000. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
  5. The application discloses that by written agreement made by the Applicant, 85.7% of the Ontario members and 86.67% of Quebec members, and 100% of the former members in Ontario and 75% of annuitants in Quebec, the surplus in the Plan at the date of payment, after deduction of wind up expenses and other adjustments described in 6. below, is to be distributed:
    - a) 40% to the Employer; and
    - b) 60% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
  6. The applicant has provided certification that the application complies with the requirements of the *Quebec Supplemental Pension Plans Act*. Ten of the Quebec members and annuitants did not consent to the Surplus Sharing Agreement. These represent less than 30% of the 57 Quebec members and annuitants entitled to payments under the Plan.
  7. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 40% of the surplus in the Plan (after adding 40% of investment earnings and deducting 40% of the expenses related to the wind up of the Plan and 40% of the fees and expenses of those Plan members represented by Anthony Wellenreiter).
  8. The application appears to comply with section 78 and subsections 79(3)(a) and 79(3)(b) of the Act, and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
  9. Such further and other reasons as come to my attention.
- YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing. Your written notice requiring a hearing must be delivered to:
- Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9
- Attn:** The Registrar
- IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**
- DATED at Toronto, Ontario, this 28th day of May, 2002.
- K. David Gordon  
Deputy Superintendent, Pensions
- c.c. Mr. Husein Djuk  
P.O. Box 312  
North Rustico PEI  
C0A 1X0

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of the **Wajax Industries Limited Pension Plan, Registration No. 281006;**

**TO:** **Wajax Limited**  
3280 Wharton Way  
Mississauga, Ontario L4X 2C5

**Attention:** Barbara Haddad  
Manager, Compensation & Benefits  
**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the Act, consenting to the payment out of the Wajax Industries Limited Pension Plan, Registration No. 281006 (the "Plan"), to Wajax Limited in the amount of \$21,160.44, as at November 30, 2001, plus investment earnings thereon to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Wajax Limited is the employer as defined in the Plan (the "Employer").
2. The actuarial report effective January 1, 2001, has been filed and indicates a surplus of \$11,152,000 on a solvency basis. The actuary has certified that the Employer is not able to make any normal actuarial cost contributions with respect to the defined benefit provisions of the Plan until such excess surplus has been drawn down.

3. The Employer made a total of three overpayments into the pension fund on June 18, 2001 in the amount of \$8,580.82, on June 18, 2001 in the amount of \$8,694.04 and on July 26, 2001 in the amount of \$3,885.58.
4. Evidence of the overpayment to the fund for the months of June and July 2001 have been submitted to the Financial Services Commission of Ontario.
5. The application appears to comply with section 78(4) of the Act.
6. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

**Attn:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 10th day of June, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division

<sup>1</sup>NOTE – PURSUANT to section 112 of the Act, any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



## Notices of Proposal to Make a Declaration

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc. (the "Pension Plan")**, **Registration Number 0379214**;

**TO:** **Morneau Sobeco** as agent for  
Deloitte & Touche Inc.  
1500 Don Mills Road  
Suite 500  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Administrator of the Staff  
Pension Plan for Hourly Paid  
Employees of Vulcan  
Packaging Inc.**

**AND TO:** **Vulcan Packaging Inc.**  
15 Bethridge Road  
Rexdale ON M9W 1M6

**Attention:** Mr. Alex Telfer  
President  
**Employer**

**AND TO:** **Ernst & Young Inc.**  
175 Commerce Valley Drive West  
Suite 600  
Thornhill ON L3T 7P6

**Attention:** Mr. Harold Reiter  
**Trustee in Bankruptcy,  
Vulcan Packaging Inc.**

**AND TO:** **CAW Local 1008**  
467 St. Clair Street  
Chatham ON N7L 3K6

**Attention:** Mr. Joe McCabe  
**Union**

### **NOTICE OF PROPOSAL TO MAKE A DECLARATION**

#### **WHEREAS:**

1. The Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc., Registration No. 0379214 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective May 15, 1997; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on August 1, 1997.



**NOW THEREFORE TAKE NOTICE** I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of \$861,100 as at August 1, 2001 and an estimated claim against the Guarantee Fund as at August 1, 2001 of \$768,500.00.
2. Ernst & Young Inc. was appointed Trustee in Bankruptcy of Vulcan Packaging Inc. on May 15, 1997.
3. The Administrator has advised that they filed a proof of claim for the asset shortfall but is of the opinion that no recovery will be realized on the proof of claim.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 12th day of February, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Revised Pension Plan for Employees of the Employer, (the "Pension Plan"), Registration Number 0224923;**

**TO:** **The Canada Life Assurance Company**  
330 University Avenue  
Toronto ON M5G 1R8

**Attention:** Ms. Milica Stojšin  
Plan Wind-up Consultant  
**Administrator of the Revised Pension Plan for Employees of the Employer**

**AND TO:** **Brown & Collett Limited**  
2365 Matheson Blvd.  
Mississauga ON L4W 5C2

**Attention:** Mr. R.W. Bernard  
Controller  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc. (formerly Price Waterhouse Limited)**  
5700 Yonge Street  
Suite 1900  
North York ON M4M 4K7

**Attention:** Mr. Craig Munro  
**Receiver and Trustee in Bankruptcy, Brown & Collett Limited**

## **NOTICE OF PROPOSAL TO MAKE A DECLARATION**

### **WHEREAS:**

1. The Revised Pension Plan for Employees of the Employer, Registration No. 0224923 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective March 1, 1996; and
4. The Superintendent of Pensions appointed Canada life Assurance Company as the administrator (the "Administrator") of the Pension Plan on June 10, 1996.

**NOW THEREFORE TAKE NOTICE** I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Report filed by the Administrator indicates an estimated claim against the Guarantee Fund of \$436,300 as at March 1, 2002.
2. PricewaterhouseCoopers Inc. was appointed Trustee in Bankruptcy of Brown & Collett Limited on March 1, 1996 and as Receiver on April 22, 1996.
3. The Trustee in Bankruptcy has advised the Administrator that there are no funds available from the estate of Brown & Collett Limited to make payment to the Pension Plan.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 15th day of February, 2002.

K. David Gordon  
Deputy Superintendent, Pensions

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Retirement Plan for Salaried Employees of Airvector Inc. (the "Pension Plan")**, Registration Number C-9339;

**TO:** Deloitte & Touche Inc.  
c/o Morneau Sobeco  
1500 Don Mills Road  
Suite 500  
Toronto ON M3B 3K4

**Attention:** Mr. Al Kiel  
Partner  
**Administrator of the Retirement Plan for Salaried Employees of Airvector Inc.**

**AND TO:** Airvector Inc.  
201 Speers Road  
P.O. Box 430  
Oakville ON L6J 5A8

**Attention:** Camile Adib  
President  
**Employer**

## **NOTICE OF PROPOSAL TO MAKE A DECLARATION**

### **WHEREAS:**

1. The Retirement Plan for Salaried Employees of Airvector, Registration No. C-9339 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services*

*Commission of Ontario Act, 1997*, c. 28, (the "Act"); and

2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective December 31, 1986 by the Employer; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on March 20, 1997.

**NOW THEREFORE TAKE NOTICE** I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Addendum to the Supplemental Actuarial Report filed by the Administrator indicates an estimated claim against the Guarantee Fund of \$258,900.00 as at December 31, 2001.
2. The place of business of the Employer is closed due to the bankruptcy of the Employer.
3. The Administrator has advised that since the Employer is no longer in business, there are no further funds expected from the Employer or from any other sources for the Pension Plan.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>



Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 1st day of March, 2002.

K. David Gordon  
Deputy Superintendent, Pensions

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Gallaher Thorold Paper Co. Salaried Pension Plan, Registration Number 1039999;**

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto ON M5H 1B6

**Attention:** Mr. David R. Kearney  
**Administrator**  
**Gallaher Thorold Paper Co.**  
67 Front Street North  
Thorold ON L2V 3Z7

**Attention:** Mr. David Rennie  
Vice President, Human Resources  
**Employer**  
**Ernst & Young Inc.**  
Ernst & Young Tower  
P.O. Box 251, 222 Bay Street  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Mr. Felix Hsu  
Manager  
**Trustee in Bankruptcy for**  
**Gallaher Thorold Paper Co.**

## **NOTICE OF PROPOSAL TO MAKE A DECLARATION**

### **WHEREAS:**

1. The Gallaher Thorold Paper Co. Salaried Pension Plan, Registration Number 1039999 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Pensions issued an Order that the Plan be wound up effective May 25, 1999; and
4. The Superintendent of the Financial Services Commission appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on September 27, 1999.

**NOW THEREFORE TAKE NOTICE** that I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 55.46%.
2. The employer, Gallaher Thorold Paper Co., was assigned into bankruptcy on June 15, 1999.
3. The trustee in bankruptcy for Gallaher Thorold Paper Co. has advised the Administrator that there are no funds available from the estate of Gallaher Thorold Paper Co. to make payment to the Plan.



4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York, Ontario M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at North York, Ontario, this 2nd day of April, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
Financial Services Commission of Ontario

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the day of mailing.



## Notices of Proposal to Refuse to Approve

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under section 89(2)(e) of the Act relating to the **Ontario Teachers'**

**Pension Plan, Registration Number 0345785 (the "Plan");**

**TO:** **Donna Marie Sloan**  
c/o Koskie Minsky  
Barristers & Solicitors  
20 Queen Street West  
Suite 900, Box 52  
Toronto, Ontario  
M5H 3R3

**Attention:** Ari N. Kaplan  
**Counsel to the Complainant**

**AND TO:** **Teachers' Pension Plan Board**  
5650 Yonge Street  
Toronto, Ontario  
M2M 4H5

**Attention:** Anne Slivinskas  
**Counsel to the Plan**

### NOTICE OF PROPOSAL

**I PROPOSE TO REFUSE TO** issue a Notice of Proposal to make an Order under sections 87(2)(a) and (c) of the Act requiring the administrator of the Plan (the "Board") to comply with subsections 45(3) and 48(1), (3) and (10) of the Act.

### **REASONS:**

1. Mrs. Donna Marie Sloan (the "claimant") was the recipient of a survivor pre-retirement death benefit from the Plan in respect of the pensionable service of the deceased member, Patrick Sloan (the "member").

2. The member and the claimant had been married in 1964 and had four children. The member died on June 1, 1993. At the time of the member's death, one of the children qualified as a "dependent child" within the meaning of the Plan.
3. In August 1993, the claimant applied for a survivor pre-retirement death benefit. The administrator's files showed the couple as separated. The Board therefore initiated an inquiry into the claimant's marital status. In a letter dated October 23, 1993, a representative of the Board requested that the claimant provide the Board with a sworn affidavit regarding the marital relationship which included "the dates of separation, the nature of the separation, and any other information that [she] may feel is relevant."
4. The claimant sent the Board a commissioned solemn declaration sworn by her on October 22, 1993, attached to which was a letter in which she stated that while she had moved out of the matrimonial home in May 1991 due to the member's alcohol abuse, she and the member still spent time together, shared meals and continued to receive professional counselling. She stated that she had continued to do household chores at both residences. She also continued to receive mail at the matrimonial home. A supporting letter was sent to the Board from her former clergyman.
5. On the basis of the information provided by the claimant in the sworn declaration, the Board concluded that the marital relationship had not come to an end and paid the pension benefit in respect of the member's service to the claimant.



6. The Board subsequently received a copy of a petition for divorce which had been filed by the claimant in May 1993. The affidavit accompanying the petition stated that the parties had been separated since November 1990, that there was no reasonable prospect of reconciliation, and that the member was living in the matrimonial home with a girlfriend.
7. On the basis of the May 1993 affidavit, the Board determined that the claimant was not entitled to spousal death benefits after all. The claimant's pension was terminated effective December 1999 and the Board advised her that it would be taking steps to recover the pension benefits paid to her between 1993 and 1999 and to redistribute it to the dependent child or otherwise as required by the Act and the Plan.
8. The claimant, through her counsel submits that the Board is precluded from reversing its original decision by virtue of the discharge provisions in section 45(3) and 48(10) of the Act and that, in any event, she was not living separate and apart from the member at the time of his death and that, even if she was, the Board is estopped from terminating the pension on the basis of delay or some other limitation period.
9. The Board is under a statutory obligation to ensure that the Plan is administered in accordance with the Act, Regulation 909, R.R.O. 1990, as amended (the "Regulations") and the Plan. The Act and the Plan both require that for a spouse to be eligible for a pre-retirement spousal benefit the spouse and the member must not be living separate and apart at the time of the member's death. This involves a factual determination based on the evidence. If the spouses are living separate and apart, the pension benefit of the deceased member must be distributed in accordance with the Act and the Plan (i.e., to include the dependent children of the deceased member, if any).
10. Sections 45(3) and 48(10) do not operate to prevent the Board from reversing its original decision with respect to the claimant's marital status. "To be discharged" means to be relieved of obligation or liability. The purpose of the discharge provisions is to relieve a plan administrator from further responsibility on paying the pension or pension benefit if it is paid based upon the information provided by the recipient. The existence of the statutory "safe harbour" in sections 45(3) and 48(10) does not preclude a plan administrator from revisiting and, if necessary reversing, a decision with respect to benefit entitlement if it discovers that the facts on which it based its original decision were inaccurate or incomplete. The Act does not impose any time limits or other constraints on an administrator in this regard.
11. There is no evidence that the Board, in reversing its original decision, breached its fiduciary obligations to the claimant by taking into account irrelevant considerations or failing to take into account relevant considerations or making a decision that was so unreasonable that no plan administrator, properly directing him- or her-self could ever have reached it.
12. In the absence of any contravention of the Act, the Regulations or the Plan, there is no basis to issue a Notice of Proposal to make an Order under sections 87(2)(a) and/or (c) of the Act.
13. Such further reasons as may come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

Your written notice must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll-free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER AS PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 4th day of March, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division  
(or delegated signatory)

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the date of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Refuse to Approve the actuarial report on the partial wind up submitted by Bauer Nike Hockey Inc. to the Superintendent of Financial Services under sections 70(5) and 89(4) of the Act in respect of the **Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337 (the "Plan")**;

**TO:** **Bauer Nike Hockey Inc.**  
6185 McLaughlin Road  
Mississauga, ON  
L5R 3W7

**Attention:** Lorraine Banton  
Corporate Director, Human  
Resources  
**Employer and Administrator  
of the Plan**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO REFUSE TO APPROVE** the actuarial report prepared on December 23, 1998 in respect of the partial wind up of the Plan as at November 1, 1998 (the "Report"), under sections 70(5) and 89(4) of the Act.

#### **REASONS:**

1. Bauer is the employer and administrator of the Plan.
2. Bauer decided to partially wind up the Plan and submitted the Report to the Superintendent of the Financial Services Commission of Ontario in February 1999, for approval.
3. The partial wind up arose as a result of the closure of Bauer's location at 445 Dobbie Drive, in Cambridge, Ontario (the "Closure").
4. As a result of the Closure, 275 members of the Plan were laid off during the period from November 18, 1997 to May 22, 1998 (the "Partial Windup Group").
5. Bauer filed the Report on February 3, 1999.
6. The Report indicates that it reflects the grow-in benefit provisions set out in section 74(1) of the Act.
7. Section 74(1) of the Act provides certain benefits to plan members whose combination of age and continuous employment or membership in the plan equals at least fifty-five (55), upon the wind up of a pension plan. These members may receive a pension in accordance with the terms of the plan. Where the consent of the employer is a requirement for eligibility for an ancillary benefit, such as the Early Retirement Provisions of the Plan (as defined below), section 74(7) of the Act deems the employer to have given that consent.
8. Section 5.3 (c) of the Plan provides, at the discretion of Bauer, for a special unreduced early retirement pension for long-serving Plan members, defined for the purpose of this section as a member who has completed thirty (30) years of service, or a member whose combination of age and years of service with the company adds up to at least eighty (80) years (the "Early Retirement Provisions of the Plan").
9. Pursuant to section 74(1)(a) of the Act, and pursuant to the terms of the Plan, those members of the Plan whose combination of age plus years of continuous employment or membership in the Plan equalled at least fifty-five (55) at the effective date of the wind up have a right to immediately receive an unreduced early retirement pension in accordance with the Early Retirement



- Provisions of the Plan provided they are eligible for immediate payment of the pension benefit.
10. Pursuant to section 74(1)(b) of the Act, and pursuant to the terms of the Plan, those members of the Plan whose combination of age plus years of continuous employment or membership in the Plan equalled at least fifty-five (55) at the effective date of the wind up have a right to receive an unreduced early retirement pension beginning at the earliest date when they would have completed thirty (30) years of service or attained a combination of age and years of service equal to at least eighty (80) (the "Grow-in Benefits").
  11. The Report fails to reflect the Early Retirement Provisions of the Plan and the Grow-In Benefits provided under section 74(1) of the Act.
  12. The Report identifies \$244,406 in surplus assets related to the Partial Wind Up Group, as at January 1, 1998.
  13. The Report indicates (at p. 1 and at p. 16) that Bauer intends to leave any excess assets attributable to the Partial Wind Up Group in the Plan.
  14. The Report fails to provide for the distribution of the surplus assets related to the partial wind up group, as required by the Act. Partial wind up is defined under the Act as "the termination of part of a pension plan and the distribution of the assets related to that part of the pension plan."
  15. Subsection 70(6) of the Act states that "on the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits on the full wind up of a pension plan on the effective date of the partial wind up."
  16. As a result, the Report does not meet the requirements of the Act and regulations and does not protect the interests of the members and former members of the pension plan.
  17. Section 70(5) of the Act states that the Superintendent may refuse to approve a wind up report that does not meet the requirements of the Act and the regulations or that does not protect the interests of the members and former members of the pension plan.
  18. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.<sup>1</sup>

<sup>1</sup>NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the date of mailing.



Your written notice must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416-226-7752, toll-free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO APPROVE THE REPORT FOR THE REASONS OUTLINED IN THIS NOTICE.**

DATED at North York, Ontario,  
March 8th, 2002.

K. David Gordon  
Deputy Superintendent, Pension Division



## Orders that Pension Plans be Wound Up

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Gallaher Thorold Paper Co. Salaried Pension Plan, Registration Number 1039999 (the "Plan")**;

**TO:** **Arthur Andersen Inc.**  
1 King Street West  
Suite 1050  
Toronto ON M6H 1B6

**Attention:** Mr. Lawrence A. Contant  
**Administrator**

**AND TO:** **Gallaher Thorold Paper Co.**  
67 Front Street North  
Thorold ON L2V 3Z7

**Attention:** Mr. David Rennie  
Vice-President, Human Resources  
**Employer**

### ORDER

**ON** December 10, 2001, the Superintendent of Financial Services issued a Notice of Proposal to Make an Order dated December 3, 2001, to the Employer and to the Administrator of the Gallaher Thorold Paper Co. Salaried Pension Plan, Registration Number 1039999 (the "Plan"), pursuant to section 69(1) of the Act, that the Plan be wound up in whole effective May 25, 1999.

**NO REQUEST** for a hearing has been received by the Financial Services Tribunal in connection with this matter.

**I THEREFORE ORDER** that the Plan be wound up in whole effective May 25, 1999.

### **REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. The employer failed to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer, pursuant to clause 69(1)(d) of the Act.
4. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

**DATED** at North York, Ontario, this 18th day of February, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of a Superintendent of Financial Services to Make an Order pursuant to section 69 of the Act, respecting the **Pension Plan for Limitorque of Canada Ltd., Registration No. 979187;**

**TO:** **Canadian Worchester Controls Limited**  
(formerly known as Limitorque of Canada Ltd.)  
c/o Invensys Inc.  
33 Commercial Street  
B52-S1 Foxboro,  
Massachusetts 02035  
U.S.A.

**Attention:** Ms. Allyn Jerome  
Benefits Specialist  
**Employer and Administrator of the Plan**

### **ORDER**

**ON** June 13, 2001, the Superintendent of Financial Services issued a Notice of Proposal to Make an Order that the Pension Plan for Limitorque of Canada Ltd., Registration No. 979187 (the "Plan"), be wound up in part, pursuant to section 69 of the Act, in relation to those members and former members of the Plan who were employed by Limitorque of Canada Ltd. (the "Employer") and who ceased to be employed by the Employer, effective between February 1, 1995 and January 31, 1996, or the date the last Plan member employed by the Employer ceased employment, whichever is later, and as a result of:

- (i) the discontinuance of all or part of the business of the Employer; or
- (ii) the discontinuance of all or a significant portion of the business carried on by the Employer at a specific location.

**NO REQUEST** for a hearing has been received by the Financial Services Tribunal in connection with this matter.

**I THEREFORE ORDER** that, pursuant to section 69 of the Act, the Plan be wound up in part in relation to those members and former members of the Plan who were employed by the Employer and who ceased to be employed by the Employer effective between February 1, 1995 and January 31, 1996, or the date the last Plan member employed by the Employer ceased employment, whichever is later, and as a result of:

- (i) the discontinuance of all or part of the business of the Employer; or
- (ii) the discontinuance of all or a significant portion of the business carried on by the Employer at a specific location.

### **REASONS:**

1. Limitorque of Canada Ltd. is the Employer and administrator of the Plan.
2. A significant number of members of the Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer between February 1, 1995 and January 31, 1996 within the meaning of s. 69(1)(d) of the Act.
3. All or a significant portion of the business carried on by the Employer at a specific location was discontinued between February 1, 1995 and January 31, 1996, within the meaning of s. 69(1)(e) of the Act.

DATED at North York, Ontario, this 28th day of March, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from  
the Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the  
Deputy Superintendent, Pensions, to Make an  
Order pursuant to section 69 of the Act, respect-  
ing **The Pension Plan for the Employees  
of Genicom Canada Inc., Registration  
No. 924829 (the "Plan")**;

**TO:** **Mackenzie Financial  
Company**  
150 Bloor Street W., Suite M111  
Toronto ON M5S 3B5

**Attention:** Ms. Grace Tait  
Senior Pension Analyst  
**Administrator**

**AND TO:** **Genicom Canada Inc.**  
7 Paget Road  
Brampton ON L6T 5S2

**Attention:** Beverley Gardner  
Payroll Administrator  
**Employer**

### ORDER

**ON** January 10, 2002, the Deputy Super-  
intendent, Pensions, issued a Notice of Proposal  
to Make an Order dated December 21, 2001, to  
the Employer and to the Administrator of the  
Pension Plan for the Employees of Genicom  
Canada Inc., Registration No. 924829 (the  
"Plan"), pursuant to section 69(1) of the Act  
that the Plan be wholly wound up effective  
October 12, 2000 through November 30, 2000.

**NO REQUEST** for a hearing has been received  
by the Financial Services Tribunal in connection  
with this matter.

**I THEREFORE ORDER**, pursuant to section  
69(1) of the Act, that the Plan be wholly wound  
up effective October 12, 2000 through  
November 30, 2000.

### **REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension  
fund, within the meaning of clause 69(1)(a)  
of the Act.
2. The employer is bankrupt within the mean-  
ing of the *Bankruptcy and Insolvency Act*  
(Canada). R.S.C. 1985, c. B-3, as amended.
3. All or part of the employer's business or all  
or part of the assets of the employer's busi-  
ness were sold, assigned or otherwise dis-  
posed of and the person who acquired the  
business or assets did not provide a pension  
plan for the members of the employer's  
Pension Plan who became employees of the  
person.

**THE ADMINISTRATOR IS REQUIRED** pur-  
suant to section 69(2) of the Act, to give notice  
of this Order to the following persons:

**Deloitte & Touche Inc.**  
c/o Morneau Sobeco as Agents  
1500 Don Mills Road  
Suite 500  
Toronto ON M3B 3K4

**Attn:** B. Bethune Whiston  
Principal  
**Receiver and Trustee in  
Bankruptcy for Genicom  
Canada Inc.**

DATED at North York, Ontario, this 1st day of  
March, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make an  
Order pursuant to section 69 of the Act, respect-  
ing the **Employee Retirement Plan for the  
Employees of Bestway Truck Centre  
Division of 604888 Ontario Inc.,  
Registration No. 0958942;**

**TO:** **London Life Insurance  
Company**  
Group Retirement Services  
255 Dufferin Avenue  
London ON N6A 4K1

**Attention:** Nancy Galpin  
Windup Specialist  
**Administrator**

**AND TO:** **Bestway Truck Centre  
Division of 604888 Ontario  
Inc.**  
P.O. Box 1170, North Bay  
Stn. Main,  
Highway 11s at Fisher Street  
North Bay ON P1B 8K4

**Attention:** Peter Woodgate, Office Manager  
**Employer**

## **ORDER**

**ON** January 7, 2002, the Superintendent of  
Financial Services issued a Notice of Proposal to  
Make an Order dated December 21, 2001, to the  
Employer and to the Administrator of the  
Employee Retirement Plan for the Employees of  
Bestway Truck Centre Division of 604888  
Ontario Inc., Registration No. 0958942 (the  
"Plan"), pursuant to section 69(1) of the Act to  
wind up the Plan in whole.

**NO REQUEST** for a hearing has been received  
by the Financial Services Tribunal in connection  
with this matter.

**I THEREFORE ORDER** that the Plan be  
wound up in whole effective March 1, 2000, for  
the following reasons:

## **REASONS:**

There was a cessation or suspension of employer  
contributions to the pension fund, pursuant to  
clause 69(1)(a) of the Act.

**THE ADMINISTRATOR IS REQUIRED**  
pursuant to section 69(2) of the Act, to give  
notice of this Order to the following persons:

**PricewaterhouseCoopers Inc.**  
5700 Yonge St., Suite 1900  
North York ON M2M 4K7

**Attn:** David Filice  
Vice President

**Receiver and Manager for  
Bestway Truck Centre  
Division of 604888 Ontario  
Inc.**

**A. Farber & Partners Inc.**  
1200 Sheppard Ave. East  
North York ON M2K 2R8

**Attn:** Avron Mintz  
Trustee In Bankruptcy for Bestway  
Truck Centre  
**Division of 604888 Ontario  
Inc.**

**DATED** at North York, Ontario, 11th day of  
March, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
By Delegated Authority from  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Act, respecting the **Retirement Plan Sponsored by Diversified International Products Limited for Bruce McLarty, Registration No. 1022482;**

**TO:** **William M. Mercer Limited**  
BCE Place, 161 Bay Street  
P.O. Box 501  
Toronto ON M5J 2S5

**Attention:** William K. Simon  
Actuary  
**Administrator**

**AND TO:** **Diversified International Products Limited**  
66 West Wilmont Street  
Richmond Hill ON L4B 1H8

**Attention:** Bruce McLarty  
President  
**Employer**

### **ORDER**

**ON** February 1, 2002, the Superintendent of Financial Services issued a Notice of Proposal to Make an Order dated November 13, 2001, to the Employer and to the Administrator of the Retirement Plan Sponsored by Diversified International Products Limited for Bruce McLarty, Registration No. 1022482 (the "Plan"), pursuant to section 69(1) of the Act, to wind up the Plan in whole.

**NO REQUEST** for a hearing has been received by the Financial Services Tribunal in connection with this matter.

**I THEREFORE ORDER** that the Plan be wound up in whole effective February 19, 1999, for the following reasons:

### **REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. The employer failed to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*, R.S.C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the Act.
4. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer, pursuant to clause 69(1)(d) of the Act.
5. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

**THE ADMINISTRATOR IS REQUIRED**

pursuant to section 69(2) of the Act, to give notice of this Order to the following persons:

**BDO Dunwoody Limited**

Royal Bank Plaza

P.O. Box 33

200 Bay Street, 32nd Floor

Toronto ON M5J 2J9

**Attention:** D.R. McConnell  
Vice President

**Trustee in Bankruptcy and  
Receiver and Manager for  
Diversified International  
Products Limited**

DATED at North York, Ontario, 12th day of  
March, 2002.

Tom Golfetto

Director, Pension Plans Branch

By Delegated Authority from

Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");  
**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Act, respecting the **Retirement Plan for the Employees of Alloy Wheels International (Canada) Ltd., Registration No. 1036029;**

**TO:** **Arthur Andersen Inc.**  
Suite 1050  
4 King Street West  
Toronto ON M5H 1B6

**Attention:** Lawrence A. Contant  
Manager  
**Administrator**

**AND TO:** **Alloy Wheels International (Canada) Ltd.**  
49 Truman Road  
Box 13000  
Barrie ON L4M 6E7

**Attention:** Joan Oickle  
Compensation and Benefits  
Coordinator  
**Employer**

### **ORDER**

**ON** January 25, 2002, the Superintendent of Financial Services issued a Notice of Proposal to Make an Order dated January 24, 2002, to the Employer and to the Administrator of the Retirement Plan for the Employees of Alloy Wheels International (Canada) Ltd., Registration No. 1036029 (the "Plan"), pursuant to section 69(1) of the Act to wind up the Plan in whole.

**NO REQUEST** for a hearing has been received by the Financial Services Tribunal in connection with this matter.

**I THEREFORE ORDER** that the Plan be wound up in whole effective January 19, 2001, for the following reasons:

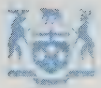
### **REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. The employer failed to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the Act.
4. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer, pursuant to clause 69(1)(d) of the Act.
5. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

**THE ADMINISTRATOR IS REQUIRED** pursuant to section 69(2) of the Act, to give notice of this Order to the following persons:

**Deloitte & Touche Inc.**  
BCE Place  
Suite 1400  
181 Bay Street  
Toronto ON M5J 2V1

**Attention:** David Murray  
Partner  
**Trustee in Bankruptcy for Alloy Wheels International (Canada) Ltd.**



DATED at North York, Ontario, 27th day of  
March, 2002.

Tom Golfetto

Director, Pension Plans Branch

By Delegated Authority from

Superintendent of Financial Services

c.c. **CAW Canada - Local 1991**

178 Dunlap Street

Barrie ON L4M 4S6

**Attention:** Ed Little

**President, Skill Trades Rep.**



## Consent to Payment of Surplus out of Wound Up Pension Plans

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Ilford Anitec (Canada) Limited Plan B Employees' Pension Plan, Registration No. 481218;**

**TO:** **Kodak Polychrome Graphics LLC**  
401 Merrit 7  
Norwalk, CT 06851

**Attention:** Mr. John B. Wooley  
Director of Human Resources  
**Applicant and Employer**

### CONSENT

**ON** or about December 10, 2001, the Superintendent of Financial Services caused to be served on Kodak Polychrome Graphics LLC a Notice of Proposal dated December 5, 2001, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Ilford Anitec (Canada) Limited Plan B Employees' Pension Plan, Registration No. 481218 (the "Plan"), to Kodak Polychrome Graphics LLC in the amount of \$164,850, as of December 31, 1998.

**NO NOTICE** requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Ilford Anitec (Canada) Limited Plan B Employees' Pension Plan, Registration No. 481218, of \$164,850, as of December 31, 1998, subject to adjustment for investment earnings or losses and expenses, to the date of payment to Kodak Polychrome Graphics LLC.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that all benefits and benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) among members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 13th day of February, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
by delegated authority from  
the Superintendent of Financial Services  
c.c. Mr. Robert G. Coyle

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Employees of Schrader Automotive (Canada) Inc., Registration No. 0923896;**

**TO:** **Schrader Automotive (Canada) Inc.**  
c/o The Gates Group of Companies  
990 South Broadway  
Denver, Colorado, USA  
80209-401

**Attention:** John Barker  
Director Retirement Benefits  
**Applicant and Employer**

### CONSENT

**ON** or about March 12, 2002, the Superintendent of Financial Services caused to be served on Schrader Automotive (Canada) Inc. a Notice of Proposal dated February 21, 2002, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Employees of Schrader Automotive (Canada) Inc., Registration No. 0923896 (the "Plan"), to Schrader Automotive (Canada) Inc. in the amount of \$99,218, as at December 31, 1999, plus interest and adjustments.

**NO NOTICE** requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Pension Plan for Employees of Schrader Automotive (Canada) Inc., Registration No. 0923896, of \$99,218, as at December 31, 1999, plus interest and adjustments, to Schrader Automotive (Canada) Inc.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement made by the Applicant on behalf of Schrader Automotive (Canada) Inc. and 100% of the active members and other members (defined in the application) and 100% of the former members at the date of wind up) and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 29th day of May, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
by delegated authority from  
the Superintendent of Financial Services

c.c. Mr. John Marks,  
Mercer Human Resource Consulting  
Mr. Tyrone Medley,  
Mercer Human Resource Consulting



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan of Nickel Development Institute for M.O. Pearce, Registration No. 969220;**

**TO:** **Nickel Development Institute**  
214 King St. West  
Suite 510  
Toronto ON M5H 3S6

**Attention:** Mr. James Lilly  
Vice President and Treasurer  
**Applicant and Employer**

### **CONSENT**

**ON** April 3, 2002, the Superintendent of Financial Services caused to be served on Nickel Development Institute a Notice of Proposal dated March 12, 2002, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan of Nickel Development Institute for M.O. Pearce, Registration No. 969220 (the "Plan"), to Nickel Development Institute in the amount of \$45,198, as at April 1, 2001, plus 100 percent of investment earnings on the surplus to the date of payment less 100 percent of expenses relating to the wind up of the Pension Plan of Nickel Development Institute for M.O. Pearce.

**NO NOTICE** requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Pension Plan of Nickel Development Institute for M.O. Pearce, Registration No. 969220, of \$45,198, as at April 1, 2001, plus 100 percent of investment earnings on the surplus to the date of payment less 100 percent of expenses relating to the wind up of the Pension Plan of Nickel Development Institute for M.O. Pearce, to Nickel Development Institute.

DATED at Toronto, Ontario, this 6th day of June, 2002.

Tom Golfetto  
Director, Pension Plans Branch  
by delegated authority from  
the Superintendent of Financial Services  
c.c. Karen A. Zilli, William M. Mercer Limited



## **Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans – Subsection 83(1) of the PBA**

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Gallaher Thorold Paper Co. Salaried Pension Plan, Registration Number 1039999**;

**TO:** **Arthur Andersen Inc.**  
Suite 1050, 4 King Street West  
Toronto ON M5H 1B6

**Attention:** Mr. David R. Kearney  
**Administrator**

**Gallaher Thorold Paper Co.**  
67 Front Street North  
Thorold ON L2V 3Z7

**Attention:** Mr. David Rennie  
Vice President, Human Resources  
**Employer**

**Ernst & Young Inc.**  
Ernst & Young Tower  
P.O. Box 251, 222 Bay Street  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Mr. Felix Hsu, Manager  
**Trustee in Bankruptcy for**  
**Gallaher Thorold Paper Co.**

### **DECLARATION**

#### **WHEREAS:**

1. The Gallaher Thorold Paper Co. Salaried Pension Plan, Registration Number 1039999 (the "Plan"), is registered under the *Pension*

*Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and

2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Pensions issued an Order that the Plan be wound up effective May 25, 1999; and
4. The Superintendent of the Financial Services Commission appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on September 27, 1999; and
5. On April 2, 2002, the Deputy Superintendent, Pension Division, issued a Notice of Proposal, dated April 2, 2002, to Make a Declaration that the Guarantee Fund applies to the Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89(6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE** I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 55.46%.
2. The employer, Gallaher Thorold Paper Co., was assigned into bankruptcy on June 15, 1999.
3. The trustee in bankruptcy for Gallaher Thorold Paper Co. has advised the Administrator that there are no funds



available from the estate of Gallaher Thorold Paper Co. to make payment to the Plan.

4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

DATED at North York, Ontario, this 29th day of May, 2002.

Tom Golfetto, Director

Pension Plans Branch

By Delegated Authority from

the Superintendent of Financial Services



## TRIBUNAL ACTIVITIES

### Appointments of FST Board Members

Name and O.C.	Effective Appointment Date	Expiry Date
<b>Milczynski</b> , Martha (Chair)		
O.C. 1622/2001	June 20, 2001	June 19, 2004
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	October 6, 1999
<b>McNairn</b> , Colin (Vice-Chair)		
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
<b>Corbett</b> , Anne (Vice-Chair, Acting)		
O.C. 1438/2001	June 20, 2001	June 19, 2004**
<b>Erlichman</b> , Louis		
O.C. 439/2002	January 23, 2002	January 22, 2005**
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
<b>Gavin</b> , Heather		
O.C. 440/2002	January 23, 2002	January 22, 2005**
O.C. 11/99	January 13, 1999	January 12, 2002
<b>Greville</b> , M. Elizabeth		
O.C. 441/2002	January 23, 2002	January 22, 2005**
O.C. 222/99	January 27, 1999	January 26, 2002
O.C. 2405/95	February 8, 1996	February 7, 1999
<b>Martin</b> , Joseph P.		
O.C. 1626/2001	June 20, 2001	June 19, 2004**
O.C. 1810/98	July 8, 1998	July 7, 2001
<b>Moore</b> , C.S. (Kit)		
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
<b>Short</b> , David A.		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
<b>Vincent</b> , J. David		
O.C. 2119/2001	October 24, 2001	October 23, 2004**
<b>Wires</b> , David E.		
O.C. 2166/99	February 26, 2000	February 25, 2003
O.C. 257/97	February 27, 1997	February 26, 2000

\*\* Or on the day FSCO/OSC merges, if earlier.



## Pension Hearings Before the Financial Services Tribunal

### **Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number 336081, FST File Number P0099-2000;**

On February 24, 2000, Mr. Patrick J. Moore, President of the United Brewers' Warehouse Workers, Local 375W, requested a hearing seeking an Order directing "the Superintendent to order the administrator of the Plan (Brewers Retail Inc.) to cease administering the Plan with an improperly constituted advisory committee and to cause the creation of a properly constituted advisory committee pursuant to the Act and formulating documents." The hearing request arose as a result of a letter from the Superintendent dated January 26, 2000, in which the Superintendent stated that there were no grounds under the *Pension Benefits Act* and Plan to order the establishment of an advisory committee. The letter also stated that any issue that Mr. Moore may have with the letter of understanding, which is part of the agreement between Brewers Retail Inc. and United Food and Commercial Worker's Provincial Board (the "UBWW/UFCW"), wherein Brewers Retail Inc. acknowledges that the UBWW/UFCW has a right to appoint a pension committee with membership, roles and responsibilities as set out in the *Pension Benefits Act*, would be a labour issue and not within the Superintendent's jurisdiction.

At a pre-hearing conference held on May 17, 2000, Brewer's Retail Inc. and the UBWW/UFCW were granted full party status. At the pre-hearing conference the parties agreed that before the Financial Services Tribunal considered the matter on its merits, it was necessary for it to determine the preliminary issue of whether it had jurisdiction to grant the relief

sought in Mr. Moore's Request for Hearing. At the pre-hearing conference, the Superintendent raised the issue of whether notice to former members of the Plan ought to be provided as it appeared that former members of the Plan were not represented.

In a telephone conference held on November 16, 2000, the hearing on the notice issue was scheduled for March 7, 2001. The hearing on the jurisdictional issue was scheduled for September 28, 2001.

On March 7, 2001, the Tribunal decided that former members had received adequate notice of the proceeding through the existing parties to the proceeding. The written reasons for Decision dated April 10, 2001, were published in Volume 10, Issue 2 of the Pension Bulletin.

On September 28, 2001, the Tribunal decided that it did not have jurisdiction to grant the relief sought by Mr. Moore. Written Reasons for Decision dated June 3, 2002, are published in this bulletin on page 112.

### **Imperial Oil Limited**

### **Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc. Registration Number 344002, FST File Number P0130-2000;**

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve a partial wind up report in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each wind up report to do the following: (a) reflect the liabilities



associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the Order subject to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring a motion with respect to answers to interrogatories. The June 4, 2002 motion date was adjourned to July 24, 2002.

**Marshall-Barwick (formerly Marshall Steel Limited), Registration Number 0968081, FST File Number P150-2001;**

On January 16, 2001, Marshall-Barwick Inc. (formerly Marshall Steel Limited) requested a hearing in respect of the Superintendent's

Notice of Proposal dated December 12, 2000. The Superintendent is proposing to refuse to approve a Partial Wind Up Report as at August 28, 1992, respecting the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies in relation to employees who ceased to be employed by Marshall Steel Limited as a result of the closure of its plant in Milton, Ontario. The Superintendent's basis for the Notice of Proposal is that the Report does not protect the interests of all those affected by the partial wind up, specifically, Mr. Jeffrey G. Marshall, an employee who was terminated during the wind up period. On June 4, 2001, Jeffrey G. Marshall applied for party status.

A pre-hearing conference was held on August 13, 2001, at which time Mr. Marshall was granted full party status. The hearing scheduled for November 29 and 30, 2001, was adjourned as a result of a joint request made by the parties on November 6, 2001. The reason for the request was due to the applicant providing Mr. Marshall with actuarial data in respect of Mr. Marshall's benefit entitlements. Mr. Marshall required additional time to obtain expert advice in respect of the information. The hearing is scheduled for September 9-10, 2002.

**National Steel Car Limited, Registration Numbers 0215020 and 0215038, FST File Number P154-2001;**

On March 7, 2001, representatives for members of the Pension Plan for Salaried Employees of National Steel Car Limited requested a hearing regarding the Superintendent's consent to the transfer of all of the assets of the Pension Plan for Salaried Employees of National Steel Car Limited to the Pension Plan for Hourly-Paid Employees of National Steel Car Limited. The Salaried Plan is in a surplus position and the Hourly-Paid Plan has an unfunded liability.



Applications for Party Status were filed on behalf of National Steel Car Limited and certain representatives of the United Steel Workers of America, Local 7135, on behalf of the members of the Hourly-Paid Plan. The two applicants for party status were joined as parties by order at the pre-hearing conference held on June 21, 2001. The main issues in this case were whether the Tribunal had the jurisdiction to entertain the applicant's request for a hearing and whether the Superintendent's consent to the transfer of assets should be set aside or varied.

A settlement conference was held September 24, 2001. The hearing was held January 15, 16 and 17, 2002. Reasons for Decision were released on May 31, 2002. The Tribunal decided, by a 2-1 majority, that it did not have jurisdiction to entertain the applicant's request for a hearing and, by a unanimous decision, that the Superintendent's consent to the transfer of assets should stand. The Reasons for Decision are published in this bulletin on page 99.

**Independent Order of Foresters  
Fieldworkers, Registration Number  
0354399, FST File Number P155-2001;**

On August 12, 2001, The Independent Order of Foresters ("IOF") requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to refuse to consent to an application for the payment of the surplus of the IOF Fieldworkers Pension Plan to the employer. The Superintendent proposed to refuse consent on the basis that she was not satisfied that the Plan had a surplus and provides for the payment of any surplus to the employer on the wind up of the Plan.

A pre-hearing conference was held on July 4, 2001, at which Mr. Irvin Grainger was joined as a party to the proceeding. The pre-hearing conference continued on July 27, 2001, at which

time it was agreed that a settlement conference would be held on November 13, 2001. A motion by IOF for a determination of the appropriate manner and form of giving notice of the hearing in this matter was heard on December 7, 2001 by a panel of the Tribunal, and was followed by a further continuation of the pre-hearing conference. At the motion hearing it was ordered that notice of hearing be by way of national newspaper publication, and that the notice also be provided by ordinary mail to all members and former members affected by the wind up. Written reasons for Orders made on December 7, 2001, were published in Volume 11, Issue 2 of the Pension Bulletin. On June 12, 2001, the Superintendent and IOF made a joint request that the hearing in this matter proceed in respect of the issue of whether the Plan provided for the payment of surplus to IOF but that the hearing in respect of the issue of whether there was any surplus in the Plan be deferred. The request was granted and the panel held a hearing on the first of the two issues on June 18, 2002, reserving its decision.

**Cooper Industries (Canada) Inc.,  
Registration Number 0240622, FST File  
Number P156-2001;**

On April 17, 2001, Cooper Industries (Canada) Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 8, 2001, to Refuse to Approve a Partial Wind Up Report, prepared in November 1999 in relation to the partial wind up of the Retirement Plan for Salaried Employees of Cooper Canada – Plan A, Registration Number 0240622, as at March 30, 1992, in relation to employees at the Port Hope location of Cooper Industries (Canada) Inc., and to make an Order requiring Cooper Industries (Canada) Inc. to refrain from using and to preserve for



distribution that portion of the surplus of the Plan attributable to the Port Hope location. The basis for the Notice of Proposal was that the Partial Wind Up Report proposed that the surplus assets of the Plan attributable to the Port Hope location be retained for continuing application toward future current service contributions for the Plan's continuing membership and, therefore, failed to provide for distribution of the Port Hope surplus assets.

On May 14, 2001, Messrs. Ray Mills and Larry Battersby applied for party status on behalf of Plan members and former Plan members employed at the Port Hope plant and beneficiaries of same.

A pre-hearing conference was held on September 5, 2001 at which Messrs. Mills and Battersby were joined as parties. The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the *Monsanto* case.

**Pension Plan for the Employees of Dyment Limited, Registration Number 0242735, FST File Number P0157-2001;**

On April 18, 2001, Dyment Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to make an Order that the Pension Plan for the Employees of Dyment Limited, Registration Number 0242735, be wound up in full effective August 23, 1996, and to refuse to approve the actuarial report prepared in April 1997 in relation to the partial wind up of the Plan as at August 23, 1996.

The basis for the Notice of Proposal was that as of August 23, 1996, there were no remaining active members in the Plan and Dyment was no longer required to make contributions. The basis for refusing to approve the actuarial report

is that the report does not meet the requirements of the *Pension Benefits Act* and the Regulations and does not protect the interests of the members or former members of the Plan.

On May 22, 2001, Mr. Mobeen Khaja applied for Party Status. Mr. Khaja was part of a group of employees who were subject to the partial wind up of the Plan, and would be affected by a full wind up of the Plan.

A pre-hearing conference was held on July 13, 2001, at which Mr. Khaja was joined as a party to the proceeding. Hearing dates originally scheduled for January 24 and 25, were changed to April 15 and 16, 2002 and were subsequently adjourned at the parties' request so that settlement discussions may continue.

**Camco Inc. Pension Plan Number 4, Registration Number 0583302 to Camco Inc. Pension Plan Number 7, Registration Number 0583336, FST File Number P160-2001;**

On May 14, 2001, Camco Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 30, 2001, to Refuse to Consent to a Transfer of Assets from the Camco Inc. Pension Plan 4, Registration Number 0583302 to the Camco Inc. Pension Plan No. 7, Registration Number 0583336.

The basis for the Notice of Proposal was that the asset transfer does not protect the pension benefits and other benefits of the former members of Plan 4 under subsection 81 (5) of the *Pension Benefits Act*.

A pre-hearing conference was held on September 24, 2001. The settlement conference scheduled for December 17, 2001, was rescheduled to February 7, 2002. Settlement discussions are continuing.



**Consumers Packaging Inc., Pension Plan II, Registration Number 0998682, FST File Number P162-2001;**

On May 17, 2001, Consumers Packaging Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 20, 2001, to Refuse to Approve a Partial Wind Up Report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial wind up of the Consumers Packaging Inc. Pension Plan II, Registration Number 0998682, as at May 7, 1997, and to Refuse to Register an amendment to such Pension Plan filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment #2.

The basis for the Notice of Proposal was that Consumers Packaging Inc. filed a partial wind up report in 1997. The Superintendent issued two Notices of Proposal in 1999 ordering Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees and refusing to approve the 1997 partial wind up report on the grounds that the replacement call-in employees were not included in the report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial wind up. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal with respect to both Notices of Proposal. The hearing concerning the call-in employees was settled by the parties and Consumers Packaging Inc. accepted as members of the Plan those replacement call-in employees who met certain conditions. The hearing request regarding the "grow-in" benefits was withdrawn. Consumers Packaging Inc. was ordered to file an amended partial wind up report. In addition, in 1997 Consumers Packaging filed an application to register Amendment #2 to the Plan which provided enhanced bridge benefits to some members.

On May 19, 2000, Consumers Packaging filed a revised partial wind up report (the "revised report") and a revised application to register Amendment #2 (the "revised Amendment"). The Superintendent issued the April 20, 2001 Notice of Proposal stating reasons that the revised Amendment is void pursuant to clause 14(1)(c) of the *Pension Benefits Act*, and that the revised report does not meet the requirements of the *Pension Benefits Act* pursuant to subsection 70(5), because the commuted value of the pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the Act. The revised report does not protect the interests of the members and former members of the Plan for the same reason.

The Superior Court of Justice, Commercial List issued an Order, dated May 23, 2001, stating that any suit, action, enforcement process, extra-judicial proceeding, regulatory, administrative or other proceeding against or in respect of Consumers Packaging Inc. already commenced be stayed and suspended until and including June 22, 2001. A further Order was issued on June 18, 2001 extending the stay period until August 15, 2001 and again until October 1, 2001. On October 1, 2001, a Pension Assumption Agreement was made. A pre-hearing conference was held on February 19, 2002. On April 18, 2002, a motion was brought by Consumers Packaging for an order compelling the Superintendent to answer certain interrogatories. The motion was dismissed. The hearing is scheduled for July 29 and 31, 2002.

**CBS Canada Co., Westinghouse Canada Inc. Pension Plan Registration Numbers 348409 and 526632, FST File Number P164-2001;**

On June 8, 2001, CBS Canada Co., the



successor to Westinghouse Canada Inc., requested hearings in connection with the Superintendent's Notices of Proposal dated May 9 and 15, 2001, to Refuse to Approve various partial wind up reports in respect of the Salaried Employees Pension Plan and the Hourly Paid Employees Pension Plan of Westinghouse Canada Inc. The partial wind ups were triggered by the closure by ABB Canada Inc. of its plants in London, Ontario; St. Jean, Quebec; and Burlington, Ontario, at which it carried on businesses acquired from Westinghouse Canada Inc., and by the closure by Westinghouse Canada Inc. of its Motor Division plant in Hamilton, Ontario.

The basis for each Notice of Proposal was that the relevant partial wind up report failed to provide employer request early retirement benefits and related bridge benefits, contemplated by each Plan, to all members of the partial wind up group whose age plus years of service equaled at least 55 and because the report failed to provide for the distribution of surplus relating to the partial wind up group.

On June 19, 2001, CAW Canada, which represented the employees who were members of the Westinghouse Hourly Paid Employees Pension Plan filed an application for party status in these proceedings. At a pre-hearing conference on November 5, 2001, CAW Canada was granted party status in the proceedings concerning the Notices of Proposal relating to the Hourly Employees Pension Plan and was given limited rights to participate in the proceedings concerning the Notices of Proposal relating to the Salaried Employees Pension Plan. The various proceedings were directed to be heard together.

At a continuation of the pre-hearing conference, held on November 29, 2001, a hearing

was scheduled for February 4-5, 2002 to deal with several jurisdictional issues to be brought on by motion of CBS Canada Co. Those issues included the following:

1. whether the Superintendent was entitled to rescind the initial approvals that she had given with respect to several of the partial wind up reports, for failure to adhere to the doctrine of fairness, and for which she subsequently substituted Notices of Proposal to refuse approval;
2. whether the Tribunal could direct the Superintendent to refuse approval of certain of the wind up reports on the basis of a ground that was not specifically recited in the relevant Notices of Proposal;
3. whether the Tribunal could determine the responsibility for any special benefits payable to the former Westinghouse employees at the facilities that were closed by ABB Inc. as between CBS Canada Co. and ABB Inc.; and
4. whether the Tribunal could order that ABB Inc. be added as a party to the proceedings against its will.

At the hearing on the jurisdictional motion, the Tribunal refused to order that ABB Inc. be added as a party, but otherwise reserved its determination of the issues raised by the motion.

The Tribunal released its Reasons for Decision on the jurisdictional motion on March 4, 2002. Those Reasons are published in this bulletin on page 75.

A settlement conference is scheduled for August 7-8, 2002. The hearing is scheduled for December 2-5 and 10-12, 2002.



**Crown Cork & Seal Canada Inc.  
Registration Numbers 474205, 595371 &  
338491, FST File Number P0165-2001;**

On June 29, 2001, Crown Cork & Seal Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada Inc. from the Crown Cork & Seal Canada Inc. Pension Plan for Salaried Employees, Registration No. 0474205 and the Pension Plan for Clerical Employees of Crown Cork & Seal Canada Inc., Registration No. 0595371 into the Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration No. 338491.

The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.

At the request of both parties a settlement conference was held on October 30, 2001, prior to the scheduling of the pre-hearing conference. The parties agreed to adjourn this matter *sine die* pending discussions between the parties.

**Samsonite Canada Inc.  
Samsonite Canadian Service Related  
Pension Plan, Registration Number  
398578, FST File Number P0166-2001 and  
FST File Number P175-2001;**

On July 3, 2001, Samsonite Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated June 1, 2001, to refuse to consent to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Service Related Pension Plan, Registration No. 398578.

On November 2, 2001, Samsonite Canada Inc. requested a hearing with respect to the

Superintendent's Notice of Proposal dated October 11, 2001, to refuse to consent to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Retirement Income Plan, Registration No. 373225.

At the pre-hearing conference held on November 9, 2001, the parties requested that these two matters be joined and heard together. The matters were joined and the hearing was held on June 3, 2002. At the hearing, the Tribunal gave the parties 30 days to file any additional written submissions.

**James MacKinnon  
(Labourers' Pension Fund of Central and  
Eastern Canada), Registration Number  
573188, FST File Number P0167-2001;**

On July 13, 2001, James MacKinnon requested a hearing with respect to the Superintendent's Notice of Proposal dated June 20, 2001, to refuse to make an Order regarding Mr. MacKinnon's request that he is entitled to receive a "Thirty and Out" pension benefit from the Labourers' Pension Fund of Central and Eastern Canada. The basis for the refusal is that in refusing to grant Mr. MacKinnon a "Thirty and Out" pension, the Plan administrators have administered the Plan in compliance with requirements of the *Pension Benefits Act* (the "Act"), the Regulations and the filed documents in respect of which the Superintendent has issued a certificate of registration. Subsection 87(2) of the Act allows the Superintendent to make an Order only if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the Act, the Regulations or the pension plan.



On July 31, 2001, the Board of Trustees of the Labourers' Pension Fund of Central and Eastern Canada filed for party status on the basis that they are the Administrators of the Plan and wish to fulfill their fiduciary duties to all beneficiaries to ensure that only valid and proper claims for benefits are paid out from the Fund to protect the interests of all beneficiaries.

At the pre-hearing conference held on November 22, 2001, party status was granted to the Labourers' Pension Fund of Central and Eastern Canada. The April 2002 settlement conference was rescheduled to June 11, 2002, and the hearing was scheduled for July 17-18 and August 16, 2002. On July 10, 2002, the hearing dates were adjourned *sine die* on consent of the parties.

**Imperial Oil Limited Retirement Plan,  
Registration Number 347054, FST File  
Number P0169-2001;**

In this matter, the Superintendent alleges that, effective April 28, 1995, Imperial Oil Limited ("IOL") sold its credit card operations to General Electric Capital Canada Inc. ("GE Capital"), at which time 37 individuals, who had been employed by IOL in that business and were members of the IOL Retirement Plan, became employees of GE Capital and members of its Pension Plan, while maintaining their accrued benefits in the IOL Retirement Plan.

On August 3, 2001, the Superintendent issued Notices of Proposal to Make Orders requiring:

- that the IOL Retirement Plan be wound up in relation to those members and former members of the Plan who ceased to be employed by GE Capital, between March 2000 and July 2000, as a result of the closure of its Markham, Ontario credit card facility; and
- that such members and former members of the IOL Retirement Plan be given credit for

both age and service at the time they ceased to be employed by GE Capital when determining their benefits, in accordance with section 80(1)(c) of the *Pension Benefits Act*, under the IOL Retirement Plan.

On August 24, 2001, IOL requested a hearing in respect of these Notices of Proposal.

A pre-hearing conference was held on January 9, 2002. The evidence phase of the hearing was held on June 13, 2002 and the submission phase is scheduled for August 1-2, 2002.

**Stanley Canada Inc., Pension Plan for  
Designated Employees of Stanley Canada  
Inc., Registration Number 456897,  
FST File Number P0170-2001;**

On August 27, 2001, Stanley Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated July 26, 2001, to refuse to consent to the application for payment of surplus to the Employer dated April 1999, pursuant to section 78(1) of the *Pension Benefits Act*.

An Application for party status was filed on November 20, 2001 by Mr. Blaine Mitton, a Member of the Plan.

The pre-hearing conference scheduled for November 28, 2001 was rescheduled to January 10, 2002 at which time Mr. Mitton was granted party status. On January 11, 2002, an Application for Party Status was filed by Mr. Edward Holba, a Member of the Plan. The parties consented to Mr. Holba's Application for Party Status and full party status was granted by Order dated April 4, 2002. The May 2002 hearing dates were adjourned at the request of the parties for a motion to be brought by the Superintendent concerning expert evidence. The Motion was heard on May 22, 2002. The hearing is scheduled for November 19-22, 2002.



**Canadian Tack & Nail Ltd. Pension Plan for Salaried Employees, Registration Number 0581306, FST File Number P0171-2001;**

On September 14, 2001, Canadian Tack & Nail Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated August 14, 2001, to Make an Order under section 87 of the *Pension Benefits Act*, requiring the Employer or Administrator of the Plan to remit within 30 days of receiving the Notice of Proposal, outstanding contributions in the amount of \$67,933 as of December 31, 1999 owed to the Pension Fund, together with interest payable under section 24 of the Regulation 909 under the Act.

The basis for the Notice of Proposal is that subsection 87(2) of the Act allows the Superintendent to make an Order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the Act, the Regulations or the pension plan or if the employer, administrator of a pension plan, or any other person is contravening a requirement of the Act or the Regulations.

At a pre-hearing conference on February 7, 2002, the parties agreed to a settlement conference. The settlement conference was scheduled for June 27, 2002.

**The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;**

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the Employer, pursuant to section 78(1) of the

*Pension Benefits Act* from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002, was adjourned at the parties' request to be rescheduled in September 2002.

**Pension Plan for Employees of Proctor & Redfern Limited, Registration Number 0289579, FST File Number P0173-2001;**

On November 5, 2001, certain former members requested a hearing regarding the Superintendent's Notice of Proposal dated October 3, 2001, to refuse to make an Order under sections 69 and 87 of the *Pension Benefits Act*. The Superintendent is proposing to refuse to make an Order that the Plan be partially wound up with respect to former employees of Proctor & Redfern Limited whose employment was terminated between and including 1994 and 1998; to refuse to make an Order that the former employees whose employment was terminated between and including 1994 and 1998 as well as former employees who had their pension benefits annuitized in 1998 and 1999 be included in the surplus sharing group identified in the Revised Wind Up Report dated December 2000 and, to refuse to make an Order that they be entitled to share in the surplus distribution on an equitable basis; and to refuse to make an Order that Earth Tech (Canada) Inc. refund to the Plan any funds improperly withdrawn from the Plan to fund its own legal and actuarial costs.

On November 26, 2001, Earth Tech (Canada) Inc. filed for party status on the basis that it is the Administrator of the Plan and has a duty to ensure that the Plan is properly wound up.



The pre-hearing conference scheduled for May 1, 2002, was rescheduled to August 26, 2002.

**Retirement Pension Plan for Employees of Twin Oak Credit Union Ltd., Registration Number 284257, FST File Number P0178-2002;**

On January 11, 2002, Twin Oak Credit Union Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated December 13, 2001, proposing to make and Order under section 87 of the *Pension Benefits Act*, with respect to Carol Joseph and any other part-time employee eligible for membership in the Plan. The Superintendent has proposed that the Administrator of the Plan pay to Ms. Joseph her pension benefit determined on the basis that Ms. Joseph was eligible for membership and should have been enrolled in the Plan effective January 1, 1978. The Superintendent also proposed to order the Administrator to provide, to any other part-time employee who was eligible to participate in the Plan, the monthly pension benefit determined on the basis that the part-time employee was eligible for membership and should have been enrolled in the Plan effective January 1, 1978 or later if employed at a later date. The Superintendent also proposed that any lump sum owing to Ms. Joseph or any other eligible part-time employee representing retroactive payments shall also be credited with interest payable pursuant to subsection 21(11) of Regulation 909 made under the Act. Applications for Party Status were filed by Carol Lynne Joseph, Mary Lynn Feenan, Sharon Wiese, Donna Fredricks and Wendy Edmunds.

At the pre-hearing conference on April 24, 2002, full party status was granted to Ms. Joseph, Ms. Feenan, Ms. Wiese and Ms. Fredricks. Party status was not granted to Ms. Edmunds.

The parties agreed to a settlement conference which was held on June 4, 2002. The parties also agreed that a preliminary motion will be brought to decide whether or not the Tribunal has the jurisdiction to deal with the proposed issue of whether or not the employer is entitled to a credit for payments made in lieu of benefits to part-time employees under the collective agreements during the period January 1, 1978 to January 1, 1988, and whether the *Limitations Act* bars this proceeding. The Motion is scheduled for November 6, 2002. The hearing is scheduled for February 24, 26-28, 2003 and March 26-28, 2003.

**Marcel Brousseau, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0183-2002;**

On February 20, 2002, Marcel Brousseau a Member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an Order in respect of the Plan Administrator's determination pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.

A pre-hearing conference is scheduled for August 27, 2002.

**Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;**

On June 7, 2002, Molson Canada requested a hearing regarding the five Notices of Proposal issued by the Superintendent each dated May 5,



2002, proposing to make orders that the various Molson Canada pension plans be wound up in part.

The pre-hearing conference date is pending.

**Donna Marie Sloan, Ontario Teachers' Pension Plan, Registration Number 0345785, FST File Number P0188-2002;**

A survivor pre-retirement death benefit that was being paid to Donna Marie Sloan under the Plan was discontinued when the Ontario Pension Plan Board, the Administrator of the Plan, concluded that she was living separate and apart from her husband, the Plan member, at the time of his death, thereby disqualifying her from receiving the benefit. On March 4, 2002, the Superintendent issued a Notice of Proposal refusing to make an Order, pursuant to section 87 of the *Pension Benefits Act*, requiring the Administrator to take action in respect of the Plan by reinstating the death benefit. On April 2, 2002, Donna Marie Sloan requested a hearing. On April 23, 2002, the Ontario Teachers' Pension Plan Board filed an Application for Party Status.

A pre-hearing conference is scheduled for August 20, 2002.

**Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;**

On April 3, 2002, Bauer Nike Hockey Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated March 8, 2002, to refuse to approve the actuarial report prepared on December 23, 1998 in respect of the partial wind up as at November 1, 1998, submitted by Bauer Nike Hockey Inc., to the Superintendent under sections 70(5) and 89(4) of the *Pension Benefits Act*, relating to the

Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337.

The pre-hearing conference is scheduled for October 28, 2002.

**Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;**

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, to make an Order that the Employer reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund after January 1, 1985 for expenses which were not incurred for the exclusive benefit of the members and retired members of the Plan, their beneficiaries or estates and their contingent annuitants (other than taxes, interest and penalties levied against the Fund or the income thereof); and to reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund; and that the Employer amend the Plan and the Trust in respect of the Fund so that all amendments to the terms of the Plan and the Trust which permit expenses to be deducted from the Fund are consistent with the 1954 Trust Agreement and the 1954 Plan Document.

The pre-hearing conference date is pending.

**DCA Employees Pension Committee and William Fitz, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;**

On May 27, 2002, William Fitz and the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, to refuse to



make an Order that the Plan be wound up, effective December 31, 1994, under section 69 of the *Pension Benefits Act*; to refuse to order, under section 87 of the Act, that Kerry (Canada) Inc. pay to the pension fund of the Plan all employer contributions for which a contribution holiday have been taken since January 1, 1985, in connection with the service of employees who joined the Plan either before or after December 31, 1994, together with income that would have been earned by the Fund of the Plan if those contributions had been made; and to refuse to order that registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused under section 18(1)(d) of the Act.

The pre-hearing conference date is pending.

**Plumbers Local 463 Pension Plan,  
Registration Number 0598532, FST File  
Number P0190-2002;**

On May 16, 2002, the Board of Trustees of the Plumbers Local 463 Pension Plan Trust Fund (the "Board of Trustees"), requested a hearing regarding an Order dated April 11, 2002 of the Deputy Superintendent, Pensions, to make an Order under subsection 106(13) of the *Pension Benefits Act*. In his Order, the Deputy Superintendent ordered that the Board of Trustees pay the cost of an examination, investigation or inquiry in respect of the Plan and pension fund for the Plan; and the cost of any opinion, report or professional attestation prepared following the examination, investigation or inquiry.

The pre-hearing conference date is pending.



## Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

<b>FST File Number</b>	<b>Superintendent of Financial Services' Notice of Proposal:</b>	<b>Comments</b>
U0177-2002	To Refuse to Consent, dated November 22, 2001	Withdrawn March 11, 2002
U0179-2002	To Refuse to Consent, dated November 22, 2001	Reasons for Decision dated May 29, 2002
U0180-2002	To Refuse to Consent, dated December 21, 2001	Reasons for Decision dated June 20, 2002
U0184-2002	To Refuse to Consent, dated January 25, 2002	Reasons for Decision dated May 14, 2002
U0185-2002	To Refuse to Consent, dated January 17, 2002	Reasons for Decision dated April 19, 2002
U0186-2002	To Refuse to Consent, dated January 11, 2002	Reasons for Decision dated May 29, 2002
U0189-2002	To Refuse to Consent, dated March 4, 2002	Reasons for Decision dated May 9, 2002

## Decisions to be Published

Brewers Retail

CBS Canada Co.

National Steel Car

U0179-2002 Reasons

U0180-2002 Reasons

U0184-2002 Reasons

U0185-2002 Reasons

U0186-2002 Reasons

U0189-2002 Reasons

## Financial Services Tribunal Decisions with Reasons

<b>INDEX NO.:</b>	FST File Number P0164-2001
<b>PLAN:</b>	Westinghouse Canada Inc. Pension Plan, Registration Numbers 348409 and 526632
<b>DATE OF DECISION:</b>	March 4, 2002
<b>PUBLISHED:</b>	Bulletin 11/3 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a proposal by the Superintendent of Financial Services (the, "Superintendent") to refuse to approve the Partial Wind Up Report for Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its Burlington, Ontario plant;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its London, Ontario and St. Jean, Quebec plants;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its Motors Division plant;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its Beach Road plant in Hamilton, Ontario;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 526632, in respect of business carried on by Westinghouse Canada Inc. at its London, Ontario and St. Jean, Quebec plants;

**AND IN THE MATTER OF** a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 526632, in respect of business carried on by Westinghouse Canada Inc. at its Motors Division plant;

**AND IN THE MATTER OF** a hearing in accordance with subsection 89(8) of the Act.

**BETWEEN:**

**CBS CANADA CO.**

**Applicant**

– and –



## **SUPERINTENDENT OF FINANCIAL SERVICES**

### **Respondent**

– and –

### **NATIONAL, AUTOMOBILE, AEROSPACE, TRANSPORTATION**

### **AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

### **AND ITS LOCAL 504**

### **A Party in Relation to Certain of the Proceedings**

#### **BEFORE:**

Mr. Colin H.H. McNairn,  
Vice Chair of the Tribunal and  
Chair of the Panel

Mr. Louis Erlichman,  
Member of the Tribunal and of the Panel

Mr. C.S. Moore,  
Member of the Tribunal and of the Panel

#### **APPEARANCES:**

##### **For CBS Canada Co.**

Mr. Andrew K. Lokan  
Mr. Steve Fruitman

##### **For the Superintendent of Financial Services**

Ms. Deborah McPhail  
Mr. Mark Bailey

##### **For the CAW-Canada and its Local 504**

Mr. Louis Gottheil

##### **For ABB Inc.**

Ms. Elizabeth M. Brown

#### **HEARING DATES:**

February 4-5, 2002

## **REASONS FOR DECISION ON JURISDICTIONAL MOTION**

### **Facts**

CBS Canada Co. ("CBS"), the applicant in these proceedings, is the successor to Westinghouse Canada Inc. ("Westinghouse"). CBS requested hearings before this Tribunal in respect of six separate Notices of Proposal, issued by the Superintendent of Financial Services (the "Superintendent"), to refuse to approve six Partial Wind Up Reports filed by CBS. Four of the reports concern partial wind ups of Westinghouse Pension Plan Registration No. 348409, being a plan for the hourly paid employees of Westinghouse (the "Westinghouse Hourly Plan"). Two of the reports concern partial wind ups of Westinghouse Plan Registration No. 526632, being a plan for the salaried employees of Westinghouse (the "Westinghouse Salaried Plan"). The grounds for the proposed refusals, relied on in each of the Notices of Proposal, are a failure of the partial wind up reports,

- a) to treat company request early retirement benefits, and related bridge benefits, under the relevant Plan as consent benefits under section 74 of the Act, and
- b) to provide for the distribution of the surplus assets related to the affected partial wind up group.

At a pre-hearing conference, the various requests for hearing were directed to be heard together. At the same conference, CAW-Canada and its Local 504 ("CAW-Canada"), which was the bargaining agent for the hourly paid employees of Westinghouse, was added as a party to the proceedings involving the Westinghouse Hourly Plan. CAW-Canada was also given the right to participate in the proceedings involving the Westinghouse Salaried



Plan to the extent of cross-examining witnesses and making submissions.

The partial wind ups of the Plans, to which the reports relate, occurred against the following background. In the 1980s and early 1990s, Westinghouse went through a significant restructuring of its operations. In some cases, Westinghouse sold certain of its plants, or parts of its plants, as going concerns. In one case, the sale related to the plant of a joint venture in which Westinghouse was a participant and to which it had sold one of its businesses. In other cases, it closed plants, or parts of plants, or simply reduced the workforces in its facilities. Specifically, it closed its Motors Division operations at a plant in Hamilton, Ontario and sold the balance of the business at that plant, which was operated by a joint venture, part of a plant in St. Jean, Quebec and plants in London and Burlington, Ontario to Asea Brown Boveri Inc., now called ABB Inc. ("ABB"), pursuant to an asset purchase agreement. Effective upon the sale, ABB created two wrap-around pension plans (the "ABB Hourly Plan" and the "ABB Salaried Plan"), providing virtually identical benefits to those under the Westinghouse Hourly Plan and the Westinghouse Salaried Plan, for employees who transferred to ABB in connection with the sale. CAW-Canada continued to represent the transferred employees as their bargaining agent, now in connection with the collective bargaining relationship to their new employer, ABB.

During the period from 1991 to 1994, ABB closed the various plants that it had acquired from Westinghouse, terminating the remaining employees who had transferred from Westinghouse in connection with that acquisition. ABB declared partial wind ups of the ABB Hourly Plan and the ABB Salaried Plan in respect of the closure of the London and St. Jean

plants. In February of 1994, the Superintendent approved the reports in respect of those partial wind ups that were filed by ABB, although those reports did not treat company request early retirement benefits provided for by the Plans as consent benefits under section 74 of the Act. In July of 1996, the Superintendent issued a Notice of Proposal to refuse to approve a report filed by ABB on the wind up of the ABB Hourly Plan, upon the closure of the Burlington plant, in part because company request early retirement benefits had not been treated as consent benefits under section 74 of the Act. ABB requested a hearing before the Pension Commission of Ontario (the "PCO") in respect of that Notice of Proposal. CAW-Canada is a party in that proceeding. In January 1999, a pre-hearing conference was held in the PCO proceeding at which ABB took the position that the issue relating to company request early retirement benefits was addressed by a revised wind up report that it had filed and that the pre-hearing conference should be adjourned because ABB's liabilities under the ABB Hourly Plan could not be finally calculated until Westinghouse had filed reports in relation to the partial wind ups of the Westinghouse Hourly Plan. The PCO pre-hearing conference was, in fact, adjourned and continues to stand adjourned.

Upon the closure of its Motors Division in June of 1995, Westinghouse declared partial wind ups of the Westinghouse Hourly Plan and the Westinghouse Salaried Plan. The reports that were filed in respect of those partial wind ups were conditionally approved by the Superintendent in February of 1999, subject to further adjustment upon determination of whether company request early retirement benefits were payable. In September of 1999, CAW-Canada made detailed submissions to the



Superintendent on the reports, addressing at length its position that company request early retirement benefits ought to be paid.

In January of 1999, the Superintendent ordered partial wind ups of the Westinghouse Hourly Plan and the Westinghouse Salaried Plan, on the basis of the closure by ABB of its London, St. Jean, Hamilton and Burlington plants. By this time, it had been established in *Gencorp Canada Inc. v. Ontario (Superintendent of Pensions)* (1998), 39 O.R. (3d) 38 (C.A.), that a wind up of an employer's pension plan could be triggered by the closure of a plant by a successor employer.

CBS filed four reports in respect of these partial wind ups in March of 2000 and counsel for CAW-Canada was advised of these filings. On September 8, 2000, copies of three of the reports – those relating to the Westinghouse Hourly Plan – were provided to CAW-Canada. On September 28, 2000, the Superintendent, acting through her delegate the Director of the Pension Plans Branch of the Financial Services Commission of Ontario, approved all four of the reports. On October 4, 2000, counsel for CAW-Canada, apparently unaware of those approvals, wrote to counsel for the Superintendent indicating that CAW-Canada intended to make submissions with respect to the reports relating to the Westinghouse Hourly Plan.

On November 17, 2000, the Director of the Pension Plans Branch advised CBS, CAW-Canada and ABB in writing that he was of the view that all four approvals were granted in breach of the duty of fairness and were, therefore, null and void. On December 8, 2000, after receiving written submissions from CBS, CAW-Canada and ABB, the Director, acting once again as delegate of the Superintendent, reaffirmed the view he had expressed earlier to

the effect that the approvals were null and void for breach of fairness, thereby effectively rescinding the approvals.

On May 9, 2001, following further submissions from CBS and CAW-Canada, the Superintendent issued four Notices of Proposal to refuse to approve the reports filed by CBS, in respect of one or the other of the Westinghouse Hourly Plan and the Westinghouse Salaried Plan, relating to the four partial wind ups triggered by the ABB plant closures. On May 16, 2001, the Superintendent issued two Notices of Proposal to refuse to approve the reports filed by CBS, in respect of one or the other of the Westinghouse Plans, relating to the partial wind ups triggered by the closure by Westinghouse of its Motors Division. These six Notices of Proposal are the Notices of Proposal that are the subject of these proceedings. The grounds for the proposed refusals in each of the Notices are as recited at the beginning of this statement of facts.

The current motion before the Tribunal was brought by CBS with a view to obtaining the determination of the Tribunal on four preliminary or jurisdictional issues. At the pre-hearing conference, ABB was granted limited party status for the purpose of enabling it to participate in the hearing on the motion in so far as it concerns the issues that could have a direct impact on ABB, namely the first two issues considered below.

### **Issue No. 1**

#### **Does the Tribunal have jurisdiction to consider:**

- (i) whether CBS or ABB bears responsibility for payment of the benefits in issue under the terms of their respective pension plans; or**



**(ii) to the extent that CBS is responsible, is ABB required to indemnify CBS?**

It was accepted by all of the parties that the Tribunal is not entitled to make an order in these proceedings that would determine the responsibility of ABB, under its pension plans, to the former employees of Westinghouse who had become its employees. The Notices of Proposal that have been challenged in these proceedings relate only to partial wind up reports that have been filed in respect of the Westinghouse plans. The question that this Tribunal will ultimately have to answer is whether those reports should be approved by the Superintendent having regard, particularly, to the criteria set out in subsection 70(5) of the Act. After making that determination, the Tribunal will be constrained, in deciding what order it should make, by subsection 89(9) of the Act. That provision would allow the Tribunal to direct the Superintendent to carry out the proposal in one or other of the Notices of Proposal, or to refrain from carrying out any such proposal, "and to take such action as the Tribunal considers the Superintendent ought to take in accordance with" the Act and the regulations under it. We are of the opinion that any direction by the Tribunal to the Superintendent to take particular action, in accordance with the Act or regulations, must be closely related to the subject matter of, or the circumstances underlying, the proposal that the Tribunal has directed the Superintendent to carry out or to refrain from carrying out. In these proceedings, an order directing the Superintendent to take action in respect of the wind up, in whole or in part, of ABB's pension plans would be too far removed from the Notices of Proposal that are before the Tribunal to be authorized by subsection 89(9) of the Act.

However, CBS maintained that the Tribunal had what it characterized as "plan text jurisdiction." By this, it meant that the Tribunal, in interpreting the Westinghouse pension plans, could properly look at the ABB pension plans and consider the inter-relationships between the pension plans of the successive employers of the plan members affected by certain of the partial wind ups of the Westinghouse plans. It would be logical, CBS said, to take this approach with a view to trying to avoid a situation where those employees could "double-dip" by getting a duplication of benefits under the pension plans of the two employers on the wind up of those plans. One might add that a similar logic would support this approach in order to try to avoid a situation, if at all possible, where those employees would be denied a particular type of benefit, which one would expect would be available on a wind up, under both of their employers plans.

We agree that the Tribunal might well find it appropriate, in the course of these proceedings, to assume "plan text jurisdiction" over the ABB plans in this limited sense, i.e., a jurisdiction that allows it to consider one or other of the ABB plans as an aid to interpreting the Westinghouse plans. This is not to say that the Pension Commission of Ontario, in its proceeding concerning the Superintendent's Notice of Proposal to refuse to approve the wind up report in respect of ABB's Hourly Plan, would be bound by an interpretation of that plan or a factual finding in relation to that plan arrived at by this Tribunal in the course of these proceedings. It would be a matter for that Commission to determine how persuasive this Tribunal's interpretation or finding should be, having regard, among other things, to the fact that ABB was given the opportunity to participate in these proceedings (a similar approach



was taken, in *obiter* comments, by the arbitration board in *Re Scarborough General Hospital and C.U.P.E., Loc. 1487* (1999), 79 L.A.C. (4th) 246, see esp. at pp. 258-260 (Ont.; L.M. Davie, J. Solberg and R. Charney)). There can certainly be no advance assurance that determinations made by this Tribunal, in these proceedings, will not affect the interests of ABB in any way or that ABB will be given notice and the opportunity to make representations if and when any determination that might affect its interests is about to be made by this Tribunal.

We were also asked, by the terms of the motion, if the Tribunal has jurisdiction to consider whether ABB is required to indemnify CBS for the amount of any of the benefits at issue in this case the payment of which we might find to be the responsibility of CBS. There are, in fact, a number of indemnity provisions in the asset purchase agreement under which ABB acquired the businesses of Westinghouse. Some of these indemnities run from ABB in favour of CBS, including an indemnity that is specific to the situation where Westinghouse incurs costs, beyond those for which it retains responsibility, as a result of a partial wind up of a Westinghouse pension plan that is triggered by the actions of ABB (paragraph 5.3(f)). ABB pointed out, in argument, that the enforceability of these indemnity provisions will involve consideration of the potential application of limitation periods within which indemnity claims must be made and that, in any event, the asset purchase agreement provides for the resolution of any disputes arising out of the agreement or its interpretation by arbitration (section 17.11).

The parties were in apparent agreement that the Tribunal could not make a binding determination as to whether the asset purchase agreement imposed an enforceable obligation on ABB to indemnify CBS if we were to find CBS

responsible for payment of the benefits at issue in this case. However, CBS maintained that the Tribunal had, at least, "agreement jurisdiction" with the result that it could look to the asset purchase agreement – not just its indemnity provisions – as an aid to interpreting the Westinghouse plans. It was important, CBS argued, for this Tribunal to make it abundantly clear what latitude it has to interpret the terms of the asset purchase agreement since a court would be likely to defer to the Tribunal for an initial view of the meaning of those terms to the extent that they are relevant in these proceedings. In this respect, it relied particularly on the decision of the Ontario Court General Division in *Ontario Hydro v. Kelly* (1998), 39 O.R. (3d) 107. We do not think that the interpretation of any of the terms of the asset purchase agreement is sufficiently connected to the subject matter of these proceedings, or within the special expertise of this Tribunal, that a court would be likely to defer to the Tribunal in this way.

Although the foreword to each of the ABB pension plans refers to the sale of the Westinghouse businesses to ABB as the reason for the establishment of the ABB plan, it also makes it clear that the plan provides for benefits accruing to eligible members after the effective date of the sale, reciting that benefits accrued to the credit of those same individuals before the effective date of the sale remain the sole responsibility of the comparable Westinghouse plan. The asset purchase agreement is not incorporated into either employer's plan so as to be subject, for that reason, to interpretation by this Tribunal in any determination of responsibility for payment of the benefits that are at issue in this case.

All of this said, we are of the opinion that some of the provisions of the asset purchase

agreement might prove to be relevant in these proceedings and that the Tribunal might have occasion to use the agreement in some way to interpret the Westinghouse plans. The persuasive force of the Tribunal's conclusions about that agreement, in any subsequent proceeding before an adjudicator to resolve a dispute under the agreement, would be for the adjudicator to determine. The situation would not be materially different from that where the Tribunal has expressed its views about the terms of one or the other of the ABB pension plans and those terms subsequently come directly into issue in another proceeding.

## Issue No. 2

### **Does the Tribunal have jurisdiction to add ABB as a party without ABB's consent when ABB has not sought party status?**

In the course of the hearing on the motion, we indicated that we had decided to refuse to make an order adding ABB as a party to these proceedings and that our reasons for this decision would be included in the reasons for our dispositions on the motion generally.

CBS argued that the Tribunal has jurisdiction to add ABB as a party under the broad authority of subsection 89(11) of the Act, which says that:

The Superintendent, the person who requires a hearing and such other persons as the Tribunal specifies are parties to the proceeding before the Tribunal under this section.

Although the Interim Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal only provide, in specific terms, for the addition of a party on application to the Tribunal, CBS maintained that a party could be added in the absence of such an application pursuant to Rule 2.02. That Rule says that:

Where procedures are not provided for in these Rules, the Tribunal may do whatever is necessary and permitted by law to effectively determine the matter before it.

ABB argued that it would be illogical to treat Rule 2.02 as available for this purpose given the right of any party to bring a motion to discontinue its participation in a proceeding before the Tribunal under Rule 42.02. Relying on Rule 42.03, it suggested that any such motion could not be denied, although the granting of the motion could be subject to conditions, such as the payment of costs by the party seeking to discontinue participation. As to subsection 89(11) of the Act, ABB maintained that the power that it conferred on the Tribunal to specify parties to a proceeding should be read narrowly, so as to avoid its use as a coercive measure, as simply allowing the Tribunal to specify parties from among those who may have applied for such status.

We do not find it necessary to decide whether the Tribunal has the jurisdiction to order that ABB be added as a party since we do not think that it would be necessary or appropriate to join ABB against its will in these proceedings should we have the jurisdiction to do so. CBS supported the addition of ABB as a party on the basis that it has information relevant to these proceedings that is not also in the possession of CBS, such as that pertaining to the severance of ABB employees who were members of the Westinghouse Plans. That information might be difficult to obtain if ABB were not a party as ABB does not currently have a presence within this jurisdiction. However, ABB advised, through its counsel, that it would co-operate by causing the appropriate officers to respond to subpoenas from this Tribunal, subject to the usual rules about attendance in response to a subpoena. As the responsibility of ABB under



its plans and under the asset purchase agreement are not directly at issue in these proceedings, we do not think it appropriate to take the unusual step of mandating ABB's participation as a party, especially given its offer of co-operation.

### Issue No. 3

**a) With respect to the September 28, 2000 approvals of four wind up reports filed by CBS with respect to the Westinghouse Hourly Plan (London/St. Jean, Burlington and Beach Road) and with respect to the Westinghouse Salaried Plan (London/St. Jean):**

- (i) Did the Superintendent have jurisdiction to rescind the approvals;**
- (ii) If so, did the Superintendent err in rescinding such approvals;**
- (iii) If so, what procedural consequences should flow from such refusals?**

There is nothing in the Act or the *Financial Services Commission of Ontario Act, 1997* that gives the Superintendent the authority to reconsider, and revise or revoke, a decision that he or she has made. There is no general authority to do so and there is no authority to do so when the decision involves the approval of a partial wind up report.

In the absence of such authority, the doctrine of *functus officio* comes into play. That doctrine is to the effect that an adjudicator – whether a court or an administrative body – once having made its final decision cannot alter that decision except in very limited circumstances (see Brown & Evans, *Judicial Review of Administrative Action in Canada* (looseleaf), at pp. 12-80 to 12-90). The doctrine, at least as it applies to

administrative bodies, is based on policy considerations that favour the finality of decisions (see *Chandler v. Alberta Association of Architects* (1989), 62 D.L.R. (4th) 577, at p. 596 (S.C.C.)). The exceptions from the doctrine include one that enables an administrative body to re-visit and correct a decision that was made in error where the error is of a kind that makes the decision null and void (see *Chandler, supra*, at p. 597). When an administrative body is subject to a duty of procedural fairness, under common law principles, in coming to a particular decision, the failure to adhere to that duty renders the decision a nullity (see Jones & de Villars, *Principles of Administrative Law* (3rd ed., 1999), at pp. 231-234). Thus, a breach of the duty of fairness in arriving at a “final” decision provides a proper basis for the administrative body that made the decision rescinding it and substituting a new decision that is arrived at in accordance with that duty.

The Superintendent acts as an adjudicator in deciding whether to approve a partial wind up report under the Act and is subject to a duty of fairness in exercising that function. This follows from the decision of the Ontario Divisional Court in *Re Collins & Pension Commission of Ontario* (1986), 56 O.R. (2d) 274, esp. at pp. 289-290 & 295-296. In that case, the court held that the Pension Commission of Ontario, a predecessor of the Superintendent, owed a duty of fairness to pension plan members in considering an application by their employer, under the Act, for consent to the withdrawal of surplus from their pension plan. That decision was recently followed in *Retirement Income Plan for Salaried Employees of Weavexx Corp. v. Ontario (Superintendent of Pensions)* (2000), 24 C.C.P.B. 154 (addendum to reasons for judgment at (2000), 26 C.C.P.B. 290) (Ont. Div. Ct.) (the decision of the



Divisional Court was affirmed, with a variation in remedy, in an unreported decision of the Court of Appeal dated February 14, 2002).

The real dispute among the parties on this Issue No. 3 is as to what is required by the duty of fairness in the circumstances of this case and as to whether the applicable requirements were breached by the Superintendent in arriving at the initial decisions to approve four of the wind up reports filed by Westinghouse.

The Supreme Court of Canada has stated, in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1991] 2 S.C.R. 817, that the "duty of fairness is flexible and variable and depends on an appreciation of the particular statute and the rights affected ...". The court set out five factors that should be taken into account in determining what procedural rights the duty of fairness requires. Underlying all of these factors, the court noted,

is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker. (At p. 837.)

The factors listed by the court are as follows:

- (a) the nature of the decision being made and the process followed in making it (the closer to the judicial model, the more likely that procedural protections akin to those in a trial setting will be required);
- (b) the statutory scheme and the terms of the statute pursuant to which the decision-making body operates (for example, greater

procedural protections will be required when no appeal process is provided within the statute);

- (c) the importance of the decision to the individual or individuals affected (the more important the decision is to the lives of those affected, the greater the procedural protections that will be required);
- (d) the legitimate expectations of the person challenging the decision (this factor takes account of promises and regular practices of administrative decision-makers, recognizing that it would be generally unfair to act in contravention of representations as to procedure); and
- (e) the choice of procedure made by the decision-making body itself, in light of relevant institutional constraints (this factor recognizes that some deference should be paid to the choice of procedure made by the decision-maker, particularly if the chosen procedure is within the range of those procedures contemplated by the governing statute or if the decision-maker has expertise in deciding on the appropriate procedure).

In the earlier case of *Wiswell v. Metropolitan Corporation of Greater Winnipeg* (1965), 51 D.L.R. (2d) 754, the Supreme Court of Canada concluded that a "known opponent" to particular action that was taken after a hearing by a quasi-judicial body should have been given specific notice of the hearing. The action in question in this case was that of a city council in "down-zoning" a particular property, which the "known opponent" – a homeowners association – could be expected to oppose given previous representations it had made to the city and its zoning board against potential high density development of the subject property. Although notice of the hearing was published



in two local daily newspapers, the failure of the city to give specific notice to the association, along with a failure to post the notice on the property in accordance with the city's own procedures, amounted to a breach of the city's duty to act in good faith and fairly listen to both sides in a dispute. The failure to give notice directly to the association in this case was particularly telling given that the city had communicated with the association a few months before the hearing in a manner that would suggest that there was nothing further that could be done by the association at that stage to further its opposition to the high density development of the property.

We now have to consider the application of the principles in *Wiswell* and *Baker* to the circumstances of this case.

It seems to us that CAW-Canada, prior to the initial approval by the Director of the Pension Plans Branch of the three wind up reports relating to the Westinghouse Hourly Plan, was in a similar position to the "known opponent" in *Wiswell* given the fact that it was on record with the office of the Superintendent as having an interest in making submissions to the effect that company request early retirement benefits were payable under the Westinghouse Hourly Plan upon a partial wind up. In August of 1999, in response to certain inquiries that had been made by CAW-Canada about four of the partial wind ups of the Westinghouse Plans, counsel for the Superintendent asked CAW-Canada if it intended to make submissions on the issue of whether company request early retirement benefits were payable in relation to the partial wind up of the Westinghouse Hourly Plan that was occasioned by the closure of the Motors Division. Counsel for CAW-Canada responded by saying that his client did, indeed, want to make such submissions. In September of 1999,

CAW-Canada made extensive written submissions to counsel for the Superintendent to the effect that such benefits were payable.

On April 3, 2000, counsel for the Superintendent advised CAW-Canada of receipt of the four reports relating to the partial wind up of the Westinghouse Plans arising out of the ABB plant closures, promising to keep CAW-Canada "advised of the progress." However, in the case of these reports, CAW-Canada received no inquiry from the office of the Superintendent about its intention to make submissions and the reports were approved on September 28, 2000, without the apparent knowledge of CAW-Canada.

CBS argued that CAW-Canada had had the opportunity to make its submissions on the company request early retirement benefits issue in the context of the Superintendent's consideration of the partial wind up of the Westinghouse Hourly Plan that was occasioned by the closure of the Motors Division. But there may have been differences in the underlying facts, or in the position taken by CBS, in relation to the partial wind ups triggered by the ABB plant closures that might have dictated different submissions from CAW-Canada in that context or, indeed, CAW-Canada may have simply chosen to remind the Superintendent of its earlier submissions if it had been given the chance to do so. In either event, the opportunity to make submissions could have proven to be meaningful and could conceivably have influenced the decision of whether the wind up reports should be approved.

CAW-Canada cannot, however, be properly treated as a "known opponent" in relation to the approval of the report on the partial wind up of the Westinghouse Salaried Plan that was later rescinded by the Superintendent.



CAW-Canada did not represent any of the members of that Plan. The common language of the two Westinghouse Plans on the subject of company request early retirement benefits and the common circumstances that gave rise to the partial wind ups of the two Plans do not give CAW-Canada the status of a party in opposition or dispute in any of the proceedings before the Superintendent in respect of a partial wind up of the Westinghouse Salaried Plan.

We now turn to the factors outlined in *Baker* in their application to the circumstance of this case.

#### **(a) The Nature of the Decision**

The decision of the Superintendent to approve a partial wind up report is clearly one in which employees who have lost their jobs as a result of the event giving rise to the partial wind up have a direct interest. Thus, given the nature of the decision, there may well be a *lis* or dispute between parties, in this case between a union that represents employees affected by the partial wind up and the employer, that is similar to the *lis* or dispute that characterizes judicial proceedings.

#### **(b) The Statutory Scheme**

It is significant that the Act is, in the words of the Ontario Court of Appeal in *Firestone Canada Inc. v. Ontario (Pension Commission)* (1990), 1 O.R. (3d) 122, "clearly intended to benefit employees" and "[i]n particular ... evinces a special solicitude for employees affected by plant closures" (at p. 127). Indeed, when in receipt of a request for approval of a wind up report, the Superintendent is directed, by subsection 70(5) of the Act, to refuse approval if the report "does not protect the interests of the members and former members of the pension plan." All of this suggests that the procedural protections that the Superintendent affords

employees, particularly those affected by plant closures and resulting pension plan wind ups, as in this case, should be more than minimal.

In the course of the hearing on this motion, we heard differing views on whether the Act allows for a review by this Tribunal, at the instigation of plan members or their bargaining agent, of a decision of the Superintendent to approve a partial wind up report. If it does, this would suggest that the procedural rights of CAW-Canada before the Superintendent, in this case, should be tempered by the fact that they would not give CAW-Canada its only opportunity (at least short of going to court by way of judicial review) to make submissions against the approval of the partial wind up reports for the Westinghouse Hourly Plan. However, as CAW-Canada pointed out in argument, it is dangerous to attribute too much to the existence of any right to request a hearing before the Tribunal as the pursuit of such a request involves a commitment of resources that a would-be requester may not have. Of course, a considerable delay is also involved in having to await a Tribunal hearing before being accorded the right to make submissions.

We do not find it necessary, in this case, to decide whether anyone would have the right, under the Act, to request a hearing before the Tribunal in respect of an approval by the Superintendent of a partial wind up report since there are other considerations that provide adequate support for our conclusions on Issue No. 3.

#### **(c) The Importance of the Decision to the Individuals Affected**

It goes without saying that any decision of the Superintendent to approve a partial wind up report could be extremely important to affected employees, such as those represented by CAW-Canada. The older members of that group



and their families may be particularly dependent on early retirement benefits which CAW-Canada would, most likely, have put in issue in this case, upon the Superintendent's initial consideration of the reports relating to the partial wind ups of the Westinghouse Hourly Plan, had it been given the opportunity to do so.

#### **(d) The Legitimate Expectations of the Person Challenging the Decision**

We have concluded that CAW-Canada had a legitimate expectation that it would be given the opportunity to make submissions to the Superintendent in connection with CBS's request for approval of the reports on the partial wind ups of the Westinghouse Hourly Plan occasioned by the ABB plant closures. A letter of October 4, 2000, written by counsel for CAW-Canada to counsel for the Superintendent, indicates that CAW-Canada was reviewing those reports, which it had recently received, and intended to file written submissions shortly. CAW-Canada was apparently unaware, at the time, that the reports had already been approved – on September 28, 2000.

The expectation that CAW-Canada had that it would be given the opportunity to make submissions was legitimate given the conduct of the office of the Superintendent. First, that office had given CAW-Canada that very opportunity in connection with its consideration of the report relating to the partial wind up of the Westinghouse Hourly Plan occasioned by the closure of the Motors Division. CAW-Canada had availed itself of that opportunity, making submissions about entitlement to company request early retirement benefits, which could reasonably be expected to be an issue for CAW-Canada in connection with the partial wind ups of the same Plan occasioned by the ABB plant closures. Second, counsel for the

Superintendent told CAW-Canada, by letter of April 3, 2000, that the reports on those partial wind ups had been received and that CAW-Canada would be kept advised.

#### **(e) The Choice of Procedure by the Superintendent in Light of Institutional Constraints**

While the Superintendent chose not to invite CAW-Canada to make submissions with respect to the reports on the partial wind ups of the Westinghouse Hourly Plan occasioned by the ABB plant closures, it doesn't appear to us that providing such an opportunity in this and similar situations would unduly constrain the approval process before the Superintendent. If the Superintendent had to give notice and an opportunity to make representations individually to all plan members affected by a wind up, that might unduly constrain the approval process. But that is not this case.

We have therefore concluded that the Superintendent did have jurisdiction to rescind the approvals of the three wind up reports relating to the Westinghouse Hourly Plan in that there was a breach of the duty of fairness in the granting of those approvals for failure to give CAW-Canada the opportunity to make written submissions. We do not believe that the Superintendent erred in exercising that jurisdiction. We have concluded, however, that there was no breach of the duty of fairness in the granting of approval of the wind up report relating to the Westinghouse Salaried Plan. Accordingly, there was no basis for the Superintendent rescinding that approval. The consequence is that this approval must be reinstated.

## Issue No. 4

### **Does the Tribunal have jurisdiction to direct the Superintendent to refuse to approve the partial wind up reports for the Westinghouse Hourly Plan on the basis that they do not provide for special early retirement benefits under Article 6.06 of the Plan when this is not a ground raised in the relevant Notices of Proposal?**

The four Notices of Proposal to refuse to approve partial wind up reports in respect of the Westinghouse Hourly Plan do not refer to a failure to provide for special early retirement benefits as a reason for the proposed refusals. However, after reciting the specific reasons for the proposals, the Notices purport to rely, as well, on such further and other reasons as come to the attention of the Superintendent. The Act requires that a notice of proposal be accompanied by written reasons (see subsection 89(4)), but does not expressly limit any requested hearing before the Tribunal, with respect to such notice, to a consideration of those reasons.

Before the issue of the Notices of Proposal, on May 9, 2001, CAW-Canada made submissions to the Superintendent to the effect that the wind up reports to which three of those Notices (those concerning the Westinghouse Hourly Plan) relate were deficient, among other reasons, for failure to provide for the payment of special early retirement benefits. These submissions were copied to counsel for CBS and counsel for ABB. In its application for party status in these proceedings, CAW-Canada also indicated that it would submit that the relevant wind up reports should not be approved because they failed to provide the special early retirement benefits contemplated by the Westinghouse Hourly Plan. CBS cannot, therefore, claim to be

taken by surprise if this Tribunal were to entertain arguments in these proceedings that the four partial wind up reports relating to the Westinghouse Hourly Plan should not be approved because they don't make provision for special early retirement benefits.

We have concluded that we have the jurisdiction to consider that possible ground for refusal by virtue of subsection 89(9) of the Act, as read with subsection 70(5) of the Act. Subsection 89(9) authorizes the Tribunal to order the Superintendent "to take such action as the Tribunal considers the Tribunal ought to take in accordance with the Act and the regulations," in association with an order to the Superintendent to carry out or refrain from carrying out a particular proposal.

In the case of a request for approval of a wind up report, we believe that, generally speaking, the action the Superintendent ought to take is to refuse such approval, in accordance with subsection 70(5), if the report "does not meet the requirements of [the] Act and the regulations or ... protect the interests of the members and former members of the pension plan." Should a partial wind up report fail to provide for the payment of special early retirement benefits to qualifying members of the partial wind up group that are called for by the plan, we think that the report would, indeed, fail to "protect the interests of the members and former members of the pension plan." Even if the Superintendent can be said to have implicitly rejected the argument that special early retirement benefits are payable under the Westinghouse Hourly Plan, that does not preclude this Tribunal from re-considering that argument since the Tribunal is entitled, under subsection 89(9) of the Act, to "substitute its opinion for that of the Superintendent" in ordering the Superintendent "to take such



action as the Tribunal considers the Superintendent ought to take in accordance with [the] Act and regulations." As the Tribunal said in its Reasons for Orders, dated January 8, 2002, in *Independent Order of Foresters v. Superintendent of Financial Services et al.*, FST File No. P0155-2001, "the Tribunal ... does not simply review decisions or proposed decisions of the Superintendent but hears each case 'de novo'" (at p. 4).

When an issue is raised before the Tribunal without the benefit of any findings on the underlying facts, if they are disputed, or without any considered opinion of the Superintendent, the Tribunal would be entitled, under subsection 89(9), to refer the matter back to the Superintendent to make the appropriate findings and take a position on the issue. However, we think that the referral approach is in the discretion of the Tribunal and that subsection 89(9) also permits the Tribunal to address such an issue as one of first impression. If any fact finding is required, the Tribunal is not without its own processes for engaging in that exercise.

We therefore conclude that the Tribunal does have jurisdiction to direct the Superintendent to refuse to approve the partial wind up reports for the Westinghouse Hourly Plan on the basis that they do not provide for special early retirement benefits under Article 6.06 of that Plan, even though this was not a ground for refusal that was raised in the relevant Notices of Proposal. Of course, the question of whether such benefits are required to be paid under that Plan, in the circumstances of this case, remains to be addressed at the hearing on the merits in these proceedings.

## ORDER

Having regard to our conclusions on Issue No. 3, we order the Superintendent to refrain from carrying out the proposal to refuse to approve the partial wind up report for Westinghouse Pension Plan Registration No. 526632 (the Salaried Plan) in respect of business carried on by Westinghouse at its London, Ontario and St. Jean, Quebec plants. We further order the Superintendent to issue forthwith a new approval of that partial wind up report under current date. Consequently, the style of cause, describing the matters to which these proceedings relate and identifying the parties, shall be amended by deleting the sixth paragraph, which refers to that particular partial wind up report.

As noted in our discussion of Issue No. 2, we refused, at the hearing of this motion, to make an order adding ABB as a party to these proceedings. That refusal shall be deemed to speak from the date of these reasons.

DATED at Toronto, this 4th day of March, 2002.

Colin H.H. McNairn,  
Vice Chair of the Tribunal and  
Chair of the Panel

Louis Erlichman,  
Member of the Tribunal and of the Panel  
C.S. Moore,  
Member of the Tribunal and of the Panel



**INDEX NO.:** FST File Number U0185-2002  
**DATE OF DECISION:** April 19, 2002  
**PUBLISHED:** Bulletin 11/3 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated January 17, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent, dated January 17, 2002, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is

prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "December 2001 Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "March 2001 Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

**89.-(4)** Only one application may be made during each 12-month period.

**(5)** An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the December 2001 Application.

4. The March 2001 Application was signed by the Applicant on March 23, 2001. On March 26, 2001, the Superintendent consented to withdrawal of \$7,000.00 from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the March 2001 Application was a successful application.

5. On December 10, 2001, the Applicant signed the December 2001 Application, in which she applied to withdraw the



maximum amount allowed from her locked-in account on the basis of low income. As this application was made within 12 months after the successful March 2001 Application, which was made on the basis of low income, the December 2001 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the December 2001 Application cannot be granted because it fails to meet one of those requirements. **However, as of today's date of April 19, 2002, more than 12 months have passed since the date of the successful March 2001 Application, with the result that a further application for withdrawal of locked-in funds can now be made to the Superintendent. If the circumstances of the Applicant are such that she wishes to do so, a new application should be submitted for consideration by the Superintendent without further delay.**

7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated January 17, 2002 in respect of the December 2001 Application.

#### **ORDER:**

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated January 17, 2002, directed to the Applicant.

DATED at Toronto, this 19th day of April, 2002.

Mr. C. S. Moore,  
Member, Financial Services Tribunal



**INDEX NO.:** FST File Number U0189-2002  
**DATE OF DECISION:** May 9, 2002  
**PUBLISHED:** Bulletin 11/3 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated March 4, 2002 with respect to an application for withdrawal of money from an Ontario locked-in retirement account, life income fund or locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

#### **REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated March 4, 2002 that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in

whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "January 2002 Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "August 2001 Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

**89.-(4)** Only one application may be made during each 12-month period.

**(5)** An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the January 2002 Application.
4. The August 2001 Application was signed by the Applicant on August 30, 2001. On September 11, 2001, the Superintendent consented to withdrawal of \$19,150.00 from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the August 2001 Application was a successful application.



5. On January 10, 2002, the Applicant signed the January 2002 Application, in which he applied to withdraw the maximum amount allowed from his locked-in account on the basis of low income. As this application was made within 12 months after the successful August 2001 Application, which was made on the basis of low income, the January 2002 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.
6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the January 2002 Application cannot be granted because it fails to meet one of those requirements. If 12 months after the date of the successful August 2001 Application, the circumstances of the Applicant are such that he could meet the qualifications for reliance on low income, a further such application for withdrawal of locked-in funds can then be made to the Superintendent.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated March 4, 2002, in respect of the January 2002 Application.

### ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated March 4, 2002, directed to the Applicant.

DATED at Toronto, this 9th day of May, 2002.

Ms. K.M. Bush,  
Vice-Chair, Financial Services Tribunal



**INDEX NO.:** FST File Number U0184-2002  
**DATE OF DECISION:** May 14, 2002  
**PUBLISHED:** Bulletin 11/3 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated January 25, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

#### **REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent, dated January 25, 2002, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement

savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "September 2001 Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application, made on the basis of low income and signed by the Applicant on June 11, 2001 (the "June 2001 Application"), contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

**89.-(4)** Only one application may be made during each 12-month period.

**(5)** An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the September 2001 Application.

4. The June 2001 Application was signed by the Applicant on June 11, 2001. On June 25, 2001, the Superintendent consented to withdrawal of \$9,000.00 from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the June 2001 Application was a successful application.



5. On September 10, 2001, the Applicant signed the September 2001 Application, in which he applied to withdraw the maximum amount allowed from his locked-in account on the basis of low income. As this application was made within 12 months after the successful June 2001 Application, which was also made on the basis of low income, the September 2001 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.
6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the September 2001 Application cannot be granted because it fails to meet one of those requirements. However, on June 11, 2002, 12 months will have passed since the date of the June 2001 Application. If the circumstances of the Applicant are such that he wishes to do so, a new application can then be submitted for consideration by the Superintendent.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated January 25, 2002 in respect of the September 2001 Application.

### ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated January 25, 2002, directed to the Applicant.

DATED at Toronto, this 14th day of May, 2002.

Mr. C. S. Moore,  
Member, Financial Services Tribunal



**INDEX NO.:** FST File Number U0179-2002  
**DATE OF DECISION:** May 29, 2002  
**PUBLISHED:** Bulletin 11/3 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated November 22, 2001, with respect to an application for withdrawal from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

**REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated November 22, 2001 that denied the Applicant access to funds held in a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is

prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the Applicant did not meet the conditions prescribed in Subsection 89(6) of the Regulation for a withdrawal based on low income.
3. The Superintendent also questioned the jurisdiction of the Tribunal to hold a hearing on the basis that the Applicant did not meet the time limit for requesting a hearing under Subsection 89(6) of the Act. The Tribunal has, however, received evidence that the Applicant did in fact request a hearing within the prescribed time limit. Therefore, the Tribunal has jurisdiction to hold a hearing.
4. The only issue to be determined by the Tribunal is therefore whether the Superintendent should have consented to the application.
5. An application for withdrawal based on financial hardship is subject to conditions and requirements prescribed in sections 83 through 89 of the Regulation. The relevant sections for this application are:  
**88(2)** Subject to section 89...the owner is entitled to withdraw an amount calculated using the formula,  $A - (B - C) = D$ , in which "A" is the amount the owner applies to withdraw;



"B" is the market value of all assets of the owner...

"C" is the total of the liabilities of the owner...

"(B-C)" cannot be less than 0;

"D" is the amount the owner is entitled to withdraw, net of any withholding tax and fee.

**89(6)** The amount the owner may apply to withdraw under section 88 is the amount by which "E" exceeds "F": where,

"E" is 50 per cent of the Year's Maximum Pensionable Earnings (YMPE) for the year in which the application is signed; and

"F" is 75 per cent of the owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application.

6. This application was signed in the year 2001, for which the Canada Pension Plan's YMPE was \$38,300. 50 per cent of the YMPE is \$19,150. In the application dated August, 2001, the Applicant stated that his expected total income from all sources before taxes for the 12 months following the date of the application was \$30,000. 75 per cent of this amount is \$22,500. Following 89(6), the amount that the Applicant can therefore apply to withdraw is \$19,150 - \$22,500, which is a negative amount.

7. In the Applicant's Request for Hearing, the Applicant expressed a desire to pay off debts and noted a recent reduction in his income to \$23,000. There is no discretion in the Act or Regulation for the approval of a withdrawal which does not meet the prescribed requirements. A reduction in expected income to \$23,000 would allow for some withdrawal of locked-in funds under the

terms of the Act (though not the full amount previously requested). The Applicant is not precluded from re-applying for a withdrawal on that basis.

## ORDER

The Superintendent's Notice of Proposal to Refuse to consent, dated November 22, 2001, is affirmed and this application is dismissed.

DATED at Toronto, this 29th day of May, 2002.

Mr. Louis Erlichman

Member, Financial Services Tribunal

**INDEX NO.:** FST File Number U0186-2002

**DATE OF DECISION:** May 29, 2002

**PUBLISHED:** Bulletin 11/3 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated January 11, 2002, with respect to an application for withdrawal from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

#### **REASONS:**

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated January 11, 2002 that denied the Applicant access to funds held in a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

**67.(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement

savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the Applicant did not meet the conditions prescribed in Subsection 89(6) of the Regulation for a withdrawal based on low income.
3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.
4. An application for withdrawal based on financial hardship is subject to conditions and requirements prescribed in sections 83 through 89 of the Regulation. The relevant sections for this application are:

**88(2)** Subject to section 89... the owner is entitled to withdraw an amount calculated using the formula,  $A - (B - C) = D$ , in which "A" is the amount the owner applies to withdraw;

"B" is the market value of all assets of the owner...

"C" is the total of the liabilities of the owner...

"(B-C)" cannot be less than 0;

"D" is the amount the owner is entitled to withdraw, net of any withholding tax and fee.



**89(6)** The amount the owner may apply to withdraw under section 88 is the amount by which "E" exceeds "F": where, "E" is 50 per cent of the Year's Maximum Pensionable Earnings (YMPE) for the year in which the application is signed; and "F" is 75 per cent of the owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application.

5. This application was signed in the year 2001, for which the Canada Pension Plan's YMPE was \$38,300. 50 per cent of the YMPE is \$19,150. In the application dated November 1, 2001, the Applicant stated that his expected total income from all sources before taxes for the 12 months following the date of the application was \$55,000. 75 per cent of this amount is \$41,250. Following 89(6), the amount that the Applicant can therefore apply to withdraw is \$19,150 – \$41,250, which is a negative amount.
6. In the Applicant's Request for Hearing, the Applicant referred to a large debt load creating a difficult financial situation. There is, however, no discretionary in the Act or Regulation for the approval of a withdrawal which does not meet the prescribed requirements.

## ORDER

The Superintendent's Notice of Proposal to Refuse to consent, dated January 11, 2002, is affirmed and this application is dismissed.

DATED at Toronto, this 29th day of May, 2002.

Mr. Louis Erlichman,  
Member, Financial Services Tribunal

**INDEX NO.:** FST File Number P0154-2001  
**PLAN:** Amended Pension Plan for the Hourly-Paid Employees of National Steel Car Limited, Registration Number 0215038  
**DATE OF DECISION:** May 31, 2002  
**PUBLISHED:** Bulletin 11/3 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "PBA");

**AND IN THE MATTER OF** the Consent of the Superintendent of Financial Services (the "Superintendent"), pursuant to the PBA, to the transfer of assets from the Amended Pension Plan for Salaried Employees of National Steel Car Limited, Registration No. 0215020, to the Amended Pension Plan for the Hourly-Paid Employees of National Steel Car Limited, Registration No. 0215038;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8);

**BETWEEN:**

**T. STEWART BAXTER, GARY HOTRUM, GEORGE WILBUR and JUNE WILLIAMS, Representatives of Certain Members and Former Members of the Amended Pension Plan for Salaried Employees of National Steel Car Limited**

**Applicants**

– and –

**SUPERINTENDENT OF FINANCIAL SERVICES**

**Respondent**

– and –

**NATIONAL STEEL CAR LIMITED**

**Respondent**

– and –

**MAURICE ROZON, CHRIS WINTERBURN and AL REICHERT of the UNITED STEEL-WORKERS OF AMERICA, LOCAL 7135 (the "USWA") on their own behalf and on behalf of the USWA Members of the Amended Pension Plan for Hourly-Paid Employees of National Steel Car Limited Respondents**

**BEFORE:**

Mr. Colin H.H. McNairn,  
Vice Chair of the Tribunal and  
Chair of the Panel

Mr. William Forbes,  
Member of the Tribunal and of the Panel

Mr. C.S. Moore,  
Member of the Tribunal and of the Panel

**APPEARANCES:**

**For the Applicants, Stewart Baxter, Gary Hortum, George Wilbur and June Williams**

Mr. Warren S. Rapoport

**For the Respondent Superintendent**

Ms. Deborah McPhail

**For the Respondent National Steel Car Limited**

Mr. Andrew K. Lokan



**For the Respondents, Maurice Rozon,  
Chris Winterburn and Al Reichert**

Ms. Dona Campbell

**HEARING DATES:**

January 15-17, 2002

**MAJORITY REASONS FOR DECISION**

**Background**

National Steel Car Limited ("NSC") applied on February 2, 2000, for the consent of the Superintendent to the transfer of assets in the amount of \$45,188,000 from the Amended Pension Plan for Salaried Employees of National Steel Car Limited (the "Salaried Plan" or the "Plan") to the Amended Pension Plan for the Hourly-Paid Employees of National Steel Car Limited (the "Hourly Plan") to be effective March 1, 1999. The actuarial reports filed in support of the transfer application indicated that, as at March 1, 1999, the Salaried Plan had a surplus of \$23,681,800 and the Hourly Plan had an unfunded liability of \$3,088,000. Those reports also indicated that immediately after the transfer, the merged plan would have a surplus of \$20,593,800 on a going concern basis and no solvency deficiency.

On March 2, 2001, after receiving submissions from the Applicants, NSC and the USWA, the Superintendent gave consent to the transfer of assets, as requested in NSC's application, pursuant to section 81 of the PBA. The Applicants, who are members of the Salaried Plan, filed a request for a hearing by the Tribunal in respect to that consent in apparent reliance on section 89 of the PBA. Applications were then filed by NSC and by certain USWA members of the Hourly Plan for party status in the hearing before the Tribunal. Those two applications were duly granted.

The Hourly and Salaried Plans were originally

established, effective June 30, 1952, as a single plan. In 1966, NSC divided the original plan, effective July 1, 1965, into separate Salaried and Hourly Plans. The 1966 version of the Salaried Plan reserved to NSC the right, in its discretion, to amend, merge or terminate the Plan (section 18.1), subject to the following qualification;

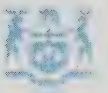
The Company shall have no power to make any change in or amendment to the Plan which would cause or permit any portion of the contributions made prior to that date to be diverted to purposes other than the exclusive benefit of the Members of the Plan ... (section 18.3).

This version of the Plan also provided that should the Plan be terminated, all contributions to the Plan would vest absolutely in the members (section 18.4).

The Plan was, in fact, amended in 1973, effective January 1, 1972, to substitute the following provision for the provision recited above;

No amendment or suspension of this Plan shall operate to reduce the benefits which have accrued to the Members of the Plan in respect of service prior to the date of such amendment or suspension as the case may be, nor shall the Company have the power to make any amendment to the Plan which would cause or permit any portion of the contributions made prior to such date to be diverted to purposes other than the exclusive benefit of Members of the Plan, Pensioners, their estates, designated beneficiaries or joint annuitants until all liabilities of the Plan have been fully met. ... (new section 18.3).

The 1973 amendment also replaced the provision dealing with the vesting of contributions on Plan termination with a provision to the effect that any surplus on termination of the Plan should revert to NSC (new section 18.5).



At the hearing in this matter, the Tribunal heard arguments on two main issues that were identified in advance by the parties. We address those issues in the next two parts of these Reasons.

## Issue No. 1

### **Does the Tribunal have jurisdiction under the PBA to hear this matter?**

Unlike a superior court, this Tribunal has no inherent jurisdiction. It is simply a creature of statute (namely, the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the “FSCO Act”), see esp. section 6) and derives its authority from statute, namely the FSCO Act and statutes such as the PBA that govern particular financial service sectors. The scope of that authority is to be determined from the express provisions of any relevant statute or by necessary implication from such a statute (as to the authority of statutory agencies generally, see Macaulay and Sprague, *Practice and Procedure before Administrative Tribunals*, looseleaf, vol. 3, c. 29). In the present case, this means that we have to look to the PBA in order to decide whether the Tribunal is entitled to entertain a request for a hearing from the Applicants in relation to the Superintendent’s consent to the transfer of assets from the Salaried Plan to the Hourly Plan. While we sometimes refer, in these Reasons, to the right to a hearing before the Tribunal, that is really the obverse side of the jurisdiction coin. Consequently, whether we speak of the jurisdiction of the Tribunal to entertain a request for a hearing or the right of a person to a hearing before the Tribunal, the PBA must confer that jurisdiction or that right, either expressly or by necessary implication.

Section 89 (formerly section 90) of the PBA is the source of the Tribunal’s jurisdiction to hold hearings in relation to decisions – or, more

precisely, proposed decisions – of the Superintendent under the PBA. The fact that the determination of the Superintendent in this case was framed as an actual consent to the transfer of assets rather than a proposal to consent should not, however, be taken to exclude the possibility of a right to a hearing; it is the nature rather than the form of the determination that should be controlling. Nor should there be an automatic right to a hearing in this case simply because the Superintendent’s consent letter advised recipients – such as the Applicants – that they had a right to request a hearing before the Tribunal. The Superintendent cannot confer jurisdiction on this Tribunal to entertain a request for a hearing; the Tribunal must have that jurisdiction under the PBA.

Various subsections of section 89 deal with proposed decisions of the Superintendent that will take the form of plan registrations, orders, approvals and consents, sometimes but not always referring to the specific provisions of the PBA that contemplate those decisions. There is some jurisprudence, from the Ontario Divisional Court and the Pension Commission of Ontario (the “PCO”), on the extent of the authority to hold a hearing that section 89 formerly conferred on the PCO and now confers on this Tribunal. The arguments before the Tribunal in the present case centred around the question of whether that jurisprudence applies here notwithstanding the difference in the precise subsection of section 89 primarily in question and the subsequent amendments to section 89 that were effected by the FSCO Act.

In this case, we are concerned primarily with subsection (4), as read with subsections (6) and (8), of section 89. To provide the context, however, we set out the first nine subsections of section 89, underlining the changes introduced by the FSCO Act:



89.-(1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.

(2) Where the Superintendent proposes to make or to refuse to make an order in relation to,

- (a) subsection 42(9) (repayment of money transferred out of a pension fund);
- (b) subsection 43(5) (repayment of money paid to purchase pension, deferred pension or ancillary benefit);
- (c) subsection 80(6) (return of assets transferred to new pension fund);
- (d) subsection 81(6) (return of assets transferred to new pension fund);
- (d.1) section 83 (the Guarantee Fund applies to a pension plan);
- (e) section 87 (administration of pension plan in contravention of Act or regulations); or
- (f) section 88 (preparation of report),

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and any other person to whom the Superintendent proposes to direct the order.

(3) Where the Superintendent proposes to make or to refuse to make an order requiring an administrator to accept an employee as a member of a class of employees for whom a pension plan is established or maintained, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator, and the Superintendent shall serve or require the

administrator to serve a copy of the notice and the written reasons on the employee.

(3.1) Where an application is filed in accordance with subsection 78(2) for the payment of surplus to the employer and the Superintendent proposes to consent or refuse to consent under subsection 78(1), the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant and on any person who made written representations to the Superintendent in accordance with subsection 78(3).

(3.2) Where an application is filed in accordance with subsection 78(4) and the Superintendent proposes to consent or refuse to consent under subsection 78(4), the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant and the Superintendent may require the applicant to transmit a copy of the notice and the written reasons on such other persons or classes of persons or both as the Superintendent specifies in the notice to the applicant.

(4) When the Superintendent proposes to refuse to give an approval or consent or proposes to attach terms and conditions to an approval or consent under this Act or the regulations, other than a consent referred to in subsection (3.1) or (3.2), the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant for the approval or consent.

(5) Where the Superintendent proposes to make an order requiring the wind up of a pension plan or declaring a pension plan wound up, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and



the employer, and the Superintendent may require the administrator to transmit a copy of the notice and the written reasons on such other persons or classes of persons or both as the Superintendent specifies in the notice to the administrator.

(6) A notice under subsection (1), (2), (3), (3.1), (3.2), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Tribunal if the person delivers to the Tribunal within thirty days after the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.

(7) Where the person on whom the notice is served does not require a hearing in accordance with subsection (6), the Superintendent may carry out the proposal stated in the notice.

(8) Where the person requires a hearing by the Tribunal in accordance with subsection (6), the Tribunal shall appoint a time for and hold a hearing.

(9) At or after the hearing, the Tribunal by order may direct the Superintendent to carry out or to refrain from carrying out the proposal and to take such action as the Tribunal considers the Superintendent ought to take in accordance with this Act and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

Before the FSCO Act came into effect in 1998, the references to the Tribunal in section 89 of the PBA were references to the PCO and "the Superintendent" meant the Superintendent of Pensions rather than the Superintendent of Financial Services.

In *C.U.P.E. v. Ontario Hospital Association* (1990), PCO Bulletin 1/4 (PCO), and (1992), 91 D.L.R.

(4th) 436 (Ont. Div. Ct.) (the "*Ontario Hospitals*" case), the "key issue," as described by the PCO (Bulletin 1/4, at p. 5), was whether the phrase "proposes to make an order" in subsection (2) of section 89 (then section 90) could be read so as to include "proposes to refuse to make an order." The PCO said that it could and the Divisional Court agreed, noting that "there is ample authority to support the proposition that a dismissal of an application [for an order] can constitute an order" (91 D.L.R. (4th) 435, at p. 441). At the time of this decision, subsection (2) was limited to situations where there is a proposal to make an order. It was subsequently amended by the FSCO Act so that it also applies to situations where there is a proposal to refuse to make an order. That amendment effectively confirms the result in the *Ontario Hospitals* case and eliminates the need for finding a necessary implication that the subsection covers a proposal to refuse to make an order since the subsection now extends to that situation explicitly.

Subsection (4) of section 89 does not lend itself to the same sort of implication that was drawn from subsection (2) of that section in the *Ontario Hospitals* case. The phrase "proposes to refuse to give ... consent" cannot be read so as to include "proposes to give consent" without stretching the language beyond reason. Moreover, it cannot be said, adapting the words of the Divisional Court in the *Ontario Hospitals* case to the circumstances of this case, that there is ample authority for the proposition that giving consent can constitute refusing to give consent. It was suggested in argument that refusing to give consent includes "refusing to refuse" consent and, therefore, covers the granting of consent. But this unduly strains language and logic. Counsel for the Superintendent argued that the Superintendent's



action in this case was tantamount to a refusal since the giving of consent to the transfer of assets could be construed as an implicit refusal to order the return of assets transferred in violation of subsection (4) of section 81 of the PBA. However, there was no evidence that the assets had actually been transferred at any time before the hearing in this matter and, if they had been transferred after the Superintendent gave unconditional consent, the Superintendent would have had no jurisdiction to order the return of those assets. An order to return assets can only be made where those assets have been transferred without consent or in breach of a prescribed term or condition of a consent to transfer (see subsection (6) of section 81).

We, therefore, conclude that subsection (4) of section 89 is limited to proposals to refuse to give approvals or consents, or to impose terms and conditions on an approval or consent, and does not admit of an implication that it also covers proposals to give approvals or consents. This interpretation is reinforced by the fact that the subsection says that the relevant notice of proposal is to be served on the applicant for approval or consent, while subsection (6) indicates that the person who is entitled to a hearing is the person on whom the notice is served. The Applicants in the present case, therefore, do not qualify, under subsection (6), as persons who are entitled to a hearing before the Tribunal since they did not apply to the Superintendent for any consent or approval.

In opting for a broad interpretation of the PCO's jurisdiction to hold hearings in the *Ontario Hospitals* case, the Divisional Court noted the PCO's "watchdog" role under the PBA and the subordinate role of the Superintendent of Pensions, who was obliged to follow the directions of the PCO as well as the terms of the PBA. The relationship between

this Tribunal and the Superintendent of Financial Services is quite different. The Tribunal does not have general responsibility for the administration of the PBA and its only authority over the Superintendent is to make orders against that official, under subsection (9) of section 89, directing that certain action be taken or not taken, in relation to any of the various kinds of proposals referred to elsewhere in section 89. Such orders can only be made by way of remedy at or after a hearing in a matter that is brought before the Tribunal through a request for hearing made under the PBA. Therefore, the consideration which supported a broad interpretation by the Divisional Court of the PCO's jurisdiction to hold hearings that was in question in the *Ontario Hospitals* case is not at play in relation to the comparable jurisdiction of this Tribunal.

One of the factors that influenced the PCO and the Divisional Court in their decisions in the *Ontario Hospitals* case was the inequity of an interpretation of section 89 that would give a losing party on one side of a contested matter before the Superintendent the right to a formal hearing under the PBA but no similar right to a losing party on the other side (the latter party being remitted to the more limited scope of judicial review through an application to court). The PCO said that it would take very clear language in the PBA to lead to the conclusion that inequitable treatment of this sort was envisaged by the PBA. We think that the language of subsection (4) of section 89 is abundantly clear and forecloses the possibility of any implication that it extends to proposals by the Superintendent to give consent. In determining the scope of the jurisdiction of this Tribunal to hold hearings, we are not entitled to read something into the PBA that cannot be supported by a necessary implication from the



language the Legislature has chosen to use. If the result is one-sided, we must respect the unambiguous decision of the Legislature to embrace that lack of symmetry.

The decision in the *Ontario Hospitals* case was followed by the PCO in three other cases where that tribunal assumed jurisdiction to hold a hearing. Those cases were like the *Ontario Hospitals* case in that the PCO concluded that a provision of section 89 of the PBA providing for a hearing where there is proposal to make a certain kind of decision could be taken to relate, as well, to a proposal to refuse to make such a decision (see *Maynard v. Ontario (Superintendent of Pensions)* and *McDonnell Douglas Canada Ltd.*, a decision of the PCO dated May 25, 1998, PCO Index No. XDEC-38 (affirmed by the Divisional Court at [2000] O.J. No. 881), *C.U.P.E. v. Ontario (Superintendent of Pensions)* and *Sisters of St. Joseph*, a decision of the PCO dated May 29, 1998, PCO Index No. XDEC-39, and *The Entitlement 55 Group v. Ontario (Superintendent of Pensions)* and *Imperial Oil Limited*, a decision of the PCO dated April 28, 1995, PCO Bulletin 6/2 (Summer 1995)). Therefore, like the *Ontario Hospitals* case, these cases are readily distinguishable since we are concerned, in the present case, with the interpretation of a provision of section 89 that confers jurisdiction to hold a hearing where there is a proposal to refuse to make a certain kind of decision.

The amendments to section 89 of the PBA effected by the FSCO Act in 1997 also militate against the conclusion that subsection (4) of section 89 implicitly covers a proposal to give consent. Through these amendments, the Legislature expressly extended the situations in which there is a right to a hearing under section 89 so that the right now applies in respect of proposals;

- to refuse to make, as well as to make, orders under specified sections of the PBA (subsection (2)),
- to consent or refuse to consent to the payment of surplus in a pension plan to the employer (new subsection (3.1)),
- to consent or refuse to consent to the return or reimbursement of certain amounts to the employer from a pension plan (new subsection (3.2)).

In other words, if any of these kinds of decisions were to be proposed, the right to a hearing would apply whether the proposal of the Superintendent was favourable or unfavourable to the person who brought the matter before the Superintendent. At the same time, subsection (4) of section 89 was left to apply, by its express terms, only to proposals to refuse to give an approval or consent, or to attach terms and conditions to an approval or consent, although the exceptions from the operation of the subsection were supplemented by the insertion of cross-references to the new subsections (3.1) and (3.2) of section 89. All of this suggests that subsection (4) was deliberately left to extend only to decisions of the Superintendent going one way, namely against the person making the request to the Superintendent. In these circumstances, we would be reluctant to conclude that the subsection extends, by implication, to decisions in favour of the person making the request.

Although we have concluded, for a number of reasons, that we do not have jurisdiction to entertain the Applicants' request for a hearing in this matter, we proceed, nonetheless, to consider the merits of the Applicants' case in the event that we are wrong in our conclusion as to jurisdiction.



## Issue No. 2

### **If the Tribunal has jurisdiction, should the Superintendent's consent to the asset transfer under section 81 of the PBA be set aside or varied?**

Section 81 of the PBA provides as follows;

81.-(1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed to be a continuation of the original pension plan.

(2) the benefits under the original pension plan in respect of employment before the establishment of the new pension plan shall be deemed to be benefits under the new pension plan.

(3) Subsection (2) applies whether or not the assets and liabilities of the original pension plan are consolidated with those of the new pension plan.

(4) No transfer of assets shall be made from the pension fund of the original pension plan to the pension fund of the new pension plan without the prior consent of the Superintendent or contrary to the prescribed terms and conditions.

(5) The Superintendent shall refuse to consent to a transfer that does not protect the pension benefits and any other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications.

(6) The Superintendent by order may require the transferee to return to the pension fund assets, with interest calculated in the

prescribed manner, transferred without the prior consent of the Superintendent or transferred contrary to a prescribed term or condition.

(7) Subject to section 89 (hearing and appeal), an order for return of assets under subsection (6), exclusive of the reasons therefor, may be filed in the Ontario Court (General Division) and is thereupon enforceable as an order of that court.

(8) No transfer of assets shall be made from one pension fund to another pension fund in circumstances where subsections (1) to (7) do not apply or where section 42 or 80 does not apply, without the prior written consent of the Superintendent or contrary to the prescribed terms and conditions and for the purpose, subsections (5) to (7) apply with necessary modifications.

The Superintendent concluded in the present case that there were no grounds, under subsection (5) of section 81 of the PBA, for refusing NSC's request for consent to the transfer of assets from the Salaried Plan to the Hourly Plan. Since no requirements and qualifications in respect of such a transfer have been prescribed by regulation, the only circumstance that would require the Superintendent to refuse consent, under subsection (5) of section 81, is if the proposed transfer of assets failed to "protect the pension benefits and any other benefits of the members and former members" (collectively the "members") of the Salaried Plan. The Applicants did not suggest that the "pension benefits" of those members were not protected as the assets in the merged plan were more than sufficient to satisfy the pension benefits (as defined in section 1 of the PBA) of the members of the Salaried Plan. In fact, the actuarial report filed by NSC with the



Superintendent, in support of its request for consent to the transfer of assets, indicated that the merged plan would have a surplus of \$20,593,800 on a going concern basis. The Applicants maintained, however, that the transfer of assets in this case did not protect “other benefits” of the members of the Salaried Plan.

The Applicants maintained that the 1966 version of the Salaried Plan had the effect of establishing a trust in respect of the Plan assets, or pension fund, for the benefit of the members of the Plan. We will assume for the purposes of our analysis, but without deciding, that there was such a trust and that the 1973 amendment to the Plan did not effectively revoke it. Assuming the continued existence of a trust, the members of the Plan might be said to have enjoyed benefits in the form of beneficial interests in the trust to which the Plan assets were subject.

The “other benefits” of the members of the Salaried Plan that the Applicants say were unprotected in the transfer of assets, and accompanying plan merger, are really interests in the excess of,

- (i) the contributions to the Plan, taken together with
  - (ii) the income generated by those contributions, over and above
  - (iii) what would be required to satisfy pension benefits under the Plan
- in other words, interests in the nature of claims to surplus. However, no member of the Salaried Plan can be said to have anything more than a contingent claim to surplus since an actual claim to surplus pre-supposes a wind up or termination of the Plan; see *Schmidt v. Air Products of Canada* (1994), 115 D.L.R. (4th) 631 (S.C.C.). The PBA says specifically that on a merger of pension plans under

section 81, the merging plan is deemed not to be wound up and the merged plan is deemed to be a continuation of the merging plan (see subsection (1)).

The Supreme Court of Canada in *Schmidt* refers to the potential claim of plan members to the surplus remaining upon termination of a pension plan – by virtue of the terms of the plan or any trust in respect of the pension fund – as a “benefit” to which members may be entitled (at p. 665). However, the court also makes it clear that the amount of that benefit is never certain during the continuation of the plan and that the right to any surplus is crystallized only when the surplus becomes ascertainable on termination of the plan (at p. 665). In our view, a member’s interest in surplus, which is contingent upon termination of the plan and the existence of an actual surplus at that time, does not fall within the expression “other benefits of members” in subsection (5) of section 81 of the PBA. While the plan continues, the plan sponsor has the benefit of the surplus in the sense that it can use it to justify contribution holidays (see *Schmidt*, at pp. 656-657). That benefit pertains even if the pension fund is subject to a trust in favour of the members. Thus, it would be inaccurate to say that the interest of the members in the surplus of an ongoing plan is a benefit of the members, in the sense of subsection (5) of section 81 of the PBA, given that the plan sponsor has the current benefit of that surplus, albeit for the limited purpose of taking contribution holidays.

There is nothing inherently objectionable about a merger of a pension plan that is in a surplus position with one that is not, even if the assets of the former plan are subject to a trust for the benefit of the members; see *Re Heilig and Dominion Securities Pitfield Ltd.* (1989), 67 O.R. (2d) 577, at p. 582 (Ont. C.A.). We were



referred to the decision of the Divisional Court in *Retirement Income Plan for Salaried Employees of Weavex Corp. v. Ontario (Superintendent of Pensions)* (2000), 133 O.A.C. 375, as authority for the proposition that on a transfer of assets the Superintendent is required, under subsection (5) of section 81 of the PBA, to protect a notional claim to surplus. However, the court's decision to set aside a consent of the Superintendent given under that subsection was based entirely on deficiencies in the process through which the Superintendent dealt with the application for consent to the transfer of assets and with objections to it. That is how the Court of Appeal, in an unreported decision dated February 14, 2002 (docket C35896 & C35919), characterized the decision in affirming it on appeal (with a modification to the form of remedy afforded by the Divisional Court). In the present case, the Applicants did not allege that there were any deficiencies in the procedure the Superintendent followed in dealing with NSC's application for consent.

The Applicants relied on *Buschau v. RogersCable Systems Inc.* (2001), 148 B.C.A.C. 263, a decision of the British Columbia Court of Appeal that may appear, at first blush, to be at odds with the decision of the Ontario Court of Appeal in *Heilig*. In fact, *Buschau* simply required an accounting for the benefit of the members of a pension plan (the "merging plan") that had been merged with certain other plans, in order to determine the proportion of the combined assets of the merged plan that were attributable to those members. The assets of the merging plan were subject to a trust in favour of the members and membership in the plan had been closed sometime prior to the merger. The apparent objective of the members of the merging plan, in requesting an accounting, was to preserve the integrity of the trust such that the

members would remain entitled to share in the surplus on termination of the trust and be in a position to bring about the termination of the trust and distribution of the trust assets in accordance with the rule in *Saunders v. Vautier* (1814), E.R. 282 (aff'd (1841), 41 E.R. 482). There was no question of the appropriateness of any transfer of assets in connection with the plan merger, which apparently did not require any regulatory approval under the pension legislation to which the merging plan was subject, namely the *Pension Benefit Standards Act*, 1985, S.C. 1986, c. 40. *Buschau* is not, therefore, the same kind of case as the present one.

The Superintendent has adopted Policy A700-251 (the "Policy"), being an administrative policy with respect to the giving of consent to a transfer of assets under section 81 of the PBA. The Policy anticipates (in section 11) that if the assets of the plan to which the transfer is to be made would be less than the liabilities of that plan (and certain other conditions pertain), the Superintendent may decide that member benefits of a kind referred to in subsection (5) of section 81 of the PBA would not be protected on the proposed transfer. Assuming there were member benefits of that kind here, that is not the situation we have to consider since the merged plan, following the transfer, would have a surplus of \$20,593,800. The Policy does not say that if there is a surplus, the proposed transfer ought to be approved. Therefore, the Policy is not helpful in this case.

### Disposition

It follows that the decision of the Superintendent granting consent to the transfer of assets from the Salaried Plan to the Hourly Plan should stand. In the event that the Tribunal has the jurisdiction to entertain the Applicants' request for a hearing in this matter, we confirm the Superintendent's consent.



DATED at Toronto, Ontario this 31st day of May, 2002.

Colin H.H. McNairn

Chair of the Panel

William Forbes

Member of the Panel

## MINORITY REASONS FOR DECISION

### Background

As background for these minority reasons, I agree with and adopt the Background section of the Majority Reasons for Decision. The two main issues identified in advance by the parties were expressed as follows:

1. Does the Tribunal have jurisdiction under the PBA to hear this matter?
2. If the Tribunal has jurisdiction, should the Superintendent's consent to the asset transfer under section 81 of the PBA be set aside or varied?

At the request of NSC, and with the approval of all parties, the Panel agreed to deal with both issues at the same hearing, with the result that we were able to decide Issue No. 2 without first determining that we had jurisdiction under the PBA to hear that matter.

### Issue No. 2

#### **If the Tribunal has jurisdiction, should the Superintendent's consent to the asset transfer under section 81 of the PBA, be set aside or varied?**

I concur with my fellow Panel members regarding the decision reached on Issue No. 2; that is, that the Superintendent's consent to the asset transfer at issue in this hearing should stand. I also agree with the reasons expressed in that section of the Majority Reasons for Decision regarding Issue No. 2.

### Issue No. 1

#### **Does the Tribunal have jurisdiction under the PBA to hear this matter?**

I do not agree with the decision reached by the majority of the Panel, that the Tribunal does not have jurisdiction to hear this matter, nor do I agree fully with the section of the Majority Reasons for Decision regarding Issue No. 1. My view is that the Tribunal should have jurisdiction, and my reasons follow.

I agree with the arguments presented by the Superintendent, and supported by the Applicants and the USWA Respondents, that the Tribunal has an implied jurisdiction to conduct a hearing of this matter under section 89 of the PBA. In making these arguments, the Superintendent relied on the authority of *Hospitals of Ontario Pension Plan*, No. C-001500, November 22, 1990, PCO Index No. XDEC-05, PCO Bulletin 1/4 (December 1990), affirmed at *C.U.P.E. v. Ontario Hospital Association* (1992), 91 D.L.R. (4th) 436 (Ont. Div. Ct.), and decisions that have followed it, namely *Imperial Oil Limited Plan and the Entitlement 55 Group*, PN 0347054 and PN 0344002, April 28, 1995, PCO Index No. XDEC-28, *Pension Plan for Salaried Employees of McDonnell Douglas Canada Ltd.*, No. 520593, May 25, 1998, PCO Index No. XDEC-38, *Maynard v. Ontario (Superintendent of Pensions)*, [2000] O.J. No. 881 (Div. Ct.), and *Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada*, PN 302851, May 29, 1998, PCO Index No. XDEC-39.

In my view, these decisions are relevant for the present hearing, as they highlight the importance of interpreting the PBA, wherever possible, to give equitable treatment of hearing rights to both sides in a pension dispute. In the *Hospitals of Ontario* (CUPE) case, the PCO and



Divisional Court both held that there was a right to a hearing under the PBA where the Superintendent had refused to make an order, even though the PBA only expressly provided a right to a hearing where the Superintendent had proposed to make an order.

The PCO's reasons included the following statements regarding the PBA (referred to as the Act):

... the legislature would have intended fair play for both sides and, where possible, the Act should be construed to provide fair and equitable treatment for all concerned. It would take very clear language indeed to persuade the Commission that inequitable treatment of the sort envisaged by the OHA and the Superintendent was intended.

... the Act is remedial in nature with one of its basic objectives to protect and enhance the rights of plan members.

The Divisional Court, in affirming this decision on appeal, stated:


It is not reasonable, in our opinion, to think that a decision to refuse to issue an order requested under s. 88 [now s. 87] should be treated any differently, for the purpose of s. 90(6) [now s. 89(6)], than one to make such an order. In the first case, those interested and in disagreement with the decision would have to live with it, while in the second, they would have access to the Commission by way of an appeal and the power it possesses under s. 90(9) [now s. 89(9)].

In the present case, we are dealing with the Superintendent's consent regarding an asset transfer under section 81 of the PBA. This consent was given in a letter dated March 2, 2001, from David Gordon by delegated authority from the Superintendent, sent to representatives of NSC, the USWA and the Applicants. This letter included a statement

that "the recipients of this letter may request a hearing before the Financial Services Tribunal with respect to the approval of the asset transfer." As a result, the Superintendent's consent may alternatively be viewed as a proposed consent to the transfer, subject to the holding of a hearing before the Tribunal if requested. The letter also included the following paragraph:

I am transmitting copies of this letter to all individuals who made submissions concerning this application in order to ensure that they are informed of my decision. The recipients of this letter may request a hearing before the Financial Services Tribunal with respect to the approval of the asset transfer. The Financial Services Tribunal is an independent adjudicative body that reviews decisions made by the Superintendent of Financial Services.

NSC had received the consent they had requested, or at least had received a proposed consent, and so had no reason to request a hearing before the Tribunal. However, the Superintendent had not consented, or proposed to consent, to the request of the Applicants – that the Superintendent deny or attach conditions to the transfer of assets – with the result that the Applicants had reason to request a hearing before the Tribunal, and did so. As a party to NSC's request for consent to a transfer of assets, the Applicants had made submissions to the Superintendent, who refused to consent to the Applicants' request, and gave them notice of the Superintendent's proposed action on this matter, in accordance with subsection 89(4). The Superintendent's letter also included an invitation for any recipients of the letter to request a hearing, in accordance with subsection 89(6), which includes the following direction:



A notice under subsection ...(4)...shall state that the person on whom the notice is served is entitled to a hearing by the Tribunal...

In my view, the Superintendent acted correctly in informing the Applicants and other parties of their right to a hearing in these circumstances, by interpreting subsection 89(4) in this manner. This view provided equitable treatment to the Applicants, for whom the Superintendent's consent or proposed consent was really a refusal to consent to the Applicants' requests. Had the Superintendent refused to consent to NSC's application for transfer of assets, NSC would have had an express right to a hearing under subsection 89(4).

In this case, the Applicants were heard by the Tribunal, even though a majority of the Panel later found that the Tribunal did not have jurisdiction. If this hearing had not been held, the Applicants could still have applied for a judicial review. In that case, the judicial review would have proceeded without the Tribunal's views, as no determination would have been made by the Tribunal. In addition, a judicial review could involve quite different costs and time constraints, and more limited grounds for overturning the Superintendent's decision, compared with a hearing before the Tribunal.

Subsection 89(4) of the PBA can be interpreted in a reasonable way that will avoid this inequitable treatment of parties. NSC argued that to do so would stretch the PBA language beyond reason, and the majority of the Panel agrees. I disagree. The Superintendent's consent to one party's request can reasonably be interpreted as a refusal to consent to an opposing party's request, as discussed earlier in my reasons.

When the PBA was amended in 1997 under the FSCO Act, section 89 was amended to extend the situations providing for a right to a hearing before the Tribunal, reflecting the prevailing view that a right to a hearing should be given whether the Superintendent's proposal or decision was favourable or unfavourable to the party bringing the matter to the Superintendent. These amendments reflected recent jurisprudence in this area, and also an increased focus on certain decisions now made in the first instance by the Superintendent (and formerly first instance decisions of the PCO tribunal). I have no reason to believe that similar amendments to subsection 89(4) were intentionally omitted, as was suggested in NSC's argument, or that such an amendment is necessary in order to give that subsection the broader interpretation.

For these reasons, I would conclude that the Tribunal does have jurisdiction to entertain the Applicants' request for a hearing in this matter.

DATED at Toronto, Ontario this 31st day of May, 2002.

C.S. Moore,  
Member of the Panel



**INDEX NO.:** FST File Number P0099-2000

**PLAN:** Brewers Retail Pension Plan for Bargaining Employees, Registration No. 0336081

**DATE OF DECISION:** June 3, 2002

**PUBLISHED:** Bulletin 11/3 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997 S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a refusal by the Superintendent of Financial Services ("the Superintendent") to make an order in response to a complaint regarding the Brewers Retail Pension Plan for Bargaining Employees, Registration Number 0336081 (the "Plan");

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act;

**BETWEEN:**

**UNITED FOOD AND COMMERCIAL WORKERS UNION,**

**Local 375W, represented by  
MR. PATRICK J. MOORE**

**Applicant**

– and –

**SUPERINTENDENT OF FINANCIAL SERVICES, BREWERS RETAIL INC., and  
UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION/**

## **UNITED BREWERS' WAREHOUSING WORKERS' PROVINCIAL BOARD**

### **Respondents**

### **MOTION HEARING**

#### **BEFORE:**

Ms. Elizabeth Greville,  
Member of the Tribunal and Chair of the Panel  
Ms. Heather Gavin,  
Member of the Tribunal  
Mr. C.S. (Kit) Moore,  
Member of the Tribunal

#### **APPEARANCES:**

##### **For the Applicant**

Mr. Thane Woodside

##### **For the Respondent United Food and Commercial Workers International Union/United Brewers' Warehousing Workers' Provincial Board**

Mr. John Evans

##### **For the Respondent Brewers Retail Inc.**

Mr. Dirk Van de Kamer

##### **For the Superintendent of Financial Services**

Ms. Deborah McPhail

#### **HEARING DATE:**

September 28, 2001



## REASONS FOR DECISION

### Nature of the Application:

The hearing request arises from a January 26, 2000 decision by the Superintendent of Financial Services (the "Superintendent") that the Superintendent had no authority or jurisdiction to grant the Applicant the relief sought. The Superintendent's decision was in response to a request that the Superintendent declare an existing pension advisory committee to be improperly constituted, and order that it be replaced by a properly constituted advisory committee under the Act.

On January 26, 2000, the Superintendent wrote to counsel for the United Brewers Warehousing Workers' Locals 375W and 305W. The letter stated in part:

"Please note that although Section 24 of the *Pension Benefits Act*, R.S.O. 1990 (the "Act") gives the plan members the right to establish an advisory committee, there is no requirement under the Act that such a committee be established. Consequently, no grounds exist under the Act for me to order the establishment of such a committee.

Section 1.36 of the plan only defines the term Pension Advisory Committee and does not require that such a committee be established. Therefore, there is no basis under the plan terms for me to order the establishment of an advisory committee.

As you pointed out in your letters, there exists a letter of understanding, which is part of the collective agreement, wherein the employer acknowledges that the Union has a right to appoint a Pension Advisory Committee that has membership, roles, and responsibilities similar to that attributed to the advisory committee described in the Act.

However, the collective agreement has been negotiated between the employer and the union and is not a part of the pension plan. Therefore, any issue with such a document would be a labour issue and not within the jurisdiction of the Financial Services Commission of Ontario."

On February 24, 2000, the Applicant requested a hearing before the Financial Services Tribunal with respect to the Superintendent's decision of January 26, 2000.

### Facts:

By Letter of Understanding dated September 1, 1994 ("1994 Letter"), between Brewers Retail Inc. (the "Employer") and the United Food and Commercial Workers International Union/United Brewers' Warehousing Workers' Provincial Board (the "Union"), the Employer acknowledged the Union's right to appoint a Pension Advisory Committee with "membership, roles and responsibilities as defined under the pension legislation." The Letter of Understanding also stated it was to form part of the Collective Agreement.

The 1994 Letter of Understanding was subsequently renewed in July, 1997 and replaced with a Letter of Understanding with identical terms.

A further updated Letter of Understanding was signed on March 8, 1999 ("1999 Letter"). It stated that the Employer acknowledged the right of the Union to appoint a Pension Committee with membership, roles and responsibilities as defined under Section 24 of the *Pension Benefits Act*, and added that the Employer would remain the Administrator for the Plan and that the "Pension Committee" would have an advisory or consultation role only. Finally, the updated letter retained the provision that the letter would form part of the Collective Agreement.



Between December, 1998 and January, 2000 there was an exchange of correspondence between counsel for the Applicant and the Superintendent's office concerning the issue of whether the pension committee established pursuant to the 1994 Letter was properly constituted, and the potential jurisdiction of the Superintendent to order that the existing committee was not properly constituted and that a properly constituted committee be formed.

### ***Pension Benefits Act***

The role and contribution of an "advisory committee," which is not otherwise defined in the Act, are set out in section 24:

- 24 (1) The **members and former members** of a pension plan by the decision of a majority of them participating in a vote, **may establish** an advisory committee.
- (2) **Each class of employees that is represented in the pension plan is entitled to appoint at least one representative** to the advisory committee established under subsection (1).
- (3) The **former members of the plan are entitled to appoint one representative** to the advisory committee established under subsection (1).
- (4) The purposes of an advisory committee are,
  - (a) to monitor the administration of the pension plan;
  - (b) to make recommendations to the administrator respecting the administration of the pension plan; and
  - (c) to promote awareness and understanding of the pension plan on the part of members of the pension plan and persons receiving pension benefits under the pension plan.
- (5) The advisory committee or its representative has the right to examine the records of the administrator in respect of the administration of the pension plan and the pension fund and to make extracts from and copies of the records, but the subsection does not apply in respect of information as to the service, salary, pension benefits or other personal information related to any specific person without the person's prior consent.
- (6) Subsection (1) does not apply,
  - (a) if the pension plan is administered by a pension committee at least one of the members of which is appointed by the members of the pension plan; and
  - (b) in respect of a multi-employer pension plan established pursuant to a collective agreement.
- (7) The administrator of a pension plan shall provide to the advisory committee or its representative such information as is under the control of the administrator and is required by the advisory committee or its representative for the purposes of the committee.  
(emphases added)

The Act defines the term "pension committee" (as opposed to the term "pension advisory committee") as a committee that is the administrator of the pension plan. Section 8 of the PBA sets out a list of authorized administrators, stating in part:

- 8 (1) A pension plan is not eligible for registration unless it is administered by an administrator who is,
  - (a) a pension committee composed of one or more representatives of,



- (i) the employer or employers, or any person other than the employer or employers, required to make contributions under the pension plan; and
- (ii) members of the pension plan;
- (b) a pension committee composed of representatives of members of the pension plan.
- (2) A pension committee, or a board of trustees, that is the administrator of a pension plan may include a representative or representatives of persons who are receiving pensions under the pension plan.

Section 87 of the Act sets out the general power of enforcement given to the Superintendent:

- 87 (1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 89 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.
- (2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,
- (a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
  - (b) that the pension plan does not comply with this Act and the regulations; or
  - (c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

### **The Issue:**

As agreed at the pre-hearing conference, the issue for this motion hearing is:

### **Does the Financial Services Tribunal have jurisdiction to deal with the relief sought in the Applicant's Request for Hearing?**

The relief sought by the Applicant is that the "Commission by Order direct the Superintendent to order the Administrator to cease administering the Plan with an improperly [sic] constituted advisory committee and to cause the creation of a properly constituted advisory committee pursuant to the Act and formulating documentation."

### **Analysis and Conclusion:**

Before May 3, 1999, the text of the Plan defined "Pension Advisory Committee" as "a committee appointed by the United Brewers Warehousing Workers' Provincial Board," and not a "pension advisory committee" as defined under "*Applicable Pension Legislation*."

Prior to May 3, 1999, the plan text defined "Pension Committee" as "the committee which was appointed by the *Employer*, in accordance with Article 14." Article 14.01 states that the Administrator (defined as the Employer, which is defined as Brewers Retail Inc.) may delegate any of its duties to such other person or persons as deemed appropriate, including but not limited to the Employer of the Pension Committee. The Plan text does not require a Pension Advisory Committee to be established and is silent on the role and/or composition of such a Committee.

Effective May 3, 1999, Amendment No. 2 to the Plan text deleted the existing definition of "Pension Advisory Committee" and substituted the following:



"1.36 "Pension Advisory Committee" means a committee appointed by the United Brewers Warehousing Workers' Provincial Board, in accordance with membership, roles and responsibilities as defined under Section 24 of the Ontario *Pension Benefits Act*, R.S.O. 1990."

The 1994 Letter and the 1999 Letter provide that the respective Letters form part of the Collective Agreement. The letters do not specify that they are incorporated into the Plan or form part of the Plan.

The Act does not authorize the Tribunal or the Superintendent to enforce a provision of a collective agreement unless the provision is incorporated by reference into the pension plan. In this case, the Letters are not so incorporated, nor do they require the Employer or administrator to establish an advisory committee.

The Act does not place any obligation on the employer or the administrator to establish an advisory committee, or to ensure that a committee, once established, is properly constituted. Rather, section 24 of the Act provides that members and former members "may establish" a pension advisory committee, and if such a committee has been established, requires the administrator to provide records and information to the committee.

The Superintendent's jurisdiction under the Act is limited to the powers conferred on it by the Act, Regulation and provisions of the applicable pension plan. Section 87(1) of the Act confers remedial powers on the Superintendent in relation to matters arising under the Act or a pension plan.

The Applicant has requested the Superintendent to declare an existing pension advisory committee to be improperly constituted and to order its replacement. However, there are no

grounds under the Act in the circumstances of this case for the Superintendent to grant the relief requested. Neither the terms of Section 24 of the Act or Section 1.36 of the Plan requires a pension advisory committee to be established. Therefore, there is no basis on which the Superintendent can make a determination under Section 87 of the Act which would give rise to a hearing under Section 89 of the Act. Accordingly, the Tribunal has no basis on which to assume jurisdiction to direct the Superintendent to order the Administrator to cease administering the Plan with an improperly constituted advisory committee, and to cause the creation of a properly constituted advisory committee.

## ORDER

For the reasons noted above, the Tribunal has determined that it lacks the jurisdiction to deal with the relief sought in the Applicant's Hearing Request and therefore lacks jurisdiction to proceed with the hearing request in the circumstances of this case.

DATED at Toronto, this 3rd day of June, 2002.

Elizabeth Greville,  
Member of the Tribunal and Chair of the Panel

Heather Gavin,  
Member of the Tribunal

C.S. (Kit) Moore,  
Member of the Tribunal



**INDEX NO.:** FST File Number U0180-2002  
**DATE OF DECISION:** June 20, 2002  
**PUBLISHED:** Bulletin 11/3 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated December 21, 2001, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the Act;

## **REASONS**

### **Facts**

The Applicant in this matter filed an Application for Consent to Withdraw Money from an Ontario Locked-in Retirement Account, Life Income Fund, or Locked-in Retirement Income Fund (the "locked-in account") based on Financial Hardship (the "Application"). The Applicant applied to withdraw \$2,104.37 to pay for medical expenses and an additional amount of \$1,660.80 for medical expenses anticipated to be paid over the 12 months following the date the Applicant

signed the Application for a total amount of \$3,765.17. The amount of \$2,104.37 was in respect of medical expenses incurred and paid or payable by the Applicant for prescription drugs and hospital expenses. The amount of \$1,660.80 was in respect of the premium the Applicant intended to pay for drug and extended health care coverage for the coming year.

Consent was issued by the Superintendent to the Application that authorized the withdrawal and payment to the Applicant of the amount of \$3,466.77 from his locked-in account. The withdrawal was authorized on the basis of the information and accompanying documentation the Applicant provided which included the amount of a hospital bill: \$2,104.37, an additional amount for the Applicant's medical prescriptions for the past year: \$681.20, and another \$681.20 for medical expenses the Superintendent determined would be payable for the 12 months following the date the Applicant signed his Application.

On December 21, 2001, the Superintendent issued a Notice of Proposal to Refuse to Consent to the Application for \$298.40, the difference between the amount the Applicant requested to withdraw in his Application, \$3,765.17, and the amount in the consent, \$3,466.77 for the reason that none of the documentation submitted with the Application supported the granting of consent to withdraw any amount in excess of the \$3,466.77 amount allowed. With respect to the Applicant's documentation relating to the cost of a drug



plan and extended health plan coverage, the Superintendent stated in the Notice of Proposal that premium amounts paid in respect of such coverage do not constitute medical expenses incurred and claimed under such plans. The Superintendent's consent only authorized the withdrawal of amounts to cover expenses related to prescriptions or hospital expenses actually incurred or to be incurred.

The Applicant filed a Request for Hearing, dated January 24, 2002 with the Financial Services Tribunal (the "Tribunal") with respect to the Superintendent's Notice of Proposal to Refuse to Consent to his Application.

### Issue

The issue in this proceeding is whether the Superintendent should have consented to the payment of the cost of the premium for drug plan and extended health plan coverage as had been set out in the Applicant's Application.

### Pension Benefits Act

Subsection 67(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act") generally prohibits the commutation or surrender of a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement. Subject to express exceptions in the Act, assets related to benefits accrued under a registered pension plan are meant to provide retirement income. Property division and payment of support orders under the *Family Law Act* are such exceptions under the Act. Subsection 67(5) of the Act provides a further exception to this general rule in circumstances of financial hardship, stating:

67(5) Despite subsections (1) and (2), upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings

arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

The circumstances of financial hardship in which the Superintendent may consent to such applications are prescribed by section 87(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation"). The Application in issue in this proceeding was based on withdrawal for medical expenses, in accordance with paragraph 3 of subsection 87(1) of the Regulation which states that:

The owner, his or her spouse or same-sex partner or a dependant has incurred or will incur medical expenses for treatment of the illness or physical disability of any of them, and the expenses claimed are reasonable and are not subject to reimbursement from any other source.

"Medical expenses" is defined under 83(1) of the PBA Regulation, as:

"medical expenses" means expenses for goods and service of a medical or dental nature including, without limiting the generality of the foregoing, expenses for,

- (a) medical or dental services provided for by a hospital or a health care provider,
- (b) services provided by an attendant or by a nursing home to a person suffering from a server and prolonged disability,
- (c) services provided by a caregiver,
- (d) ambulance services,
- (e) travel by a person and a companion to obtain medical services,
- (f) finding by an organ donor,
- (g) medical devices such as wheel chairs, artificial limbs and eyeglasses,



- (h) a guide dog or hearing ear dog,
- (i) dentures,
- (j) rehabilitative therapy, and
- (k) diagnostic testing;

It is the Superintendent's submission that premiums paid in respect of drug and extended health coverage do not constitute "goods and services of a medical or dental nature." Such amounts are not paid to a doctor, dentist, hospital or other health care provider but are paid to an insurance company providing the coverage. Premium amounts are payable regardless of the actual amount of any expenses incurred and are, in fact, payable even if no expenses are incurred. However, it is clear from a plain reading of subsection 83(1) of the Regulation that the definition or list of "medical expenses" is broad and is not exhaustive. The issue is, whether or not the premiums paid for a drug plan or extended health insurance coverage that pays for or reimburses an insured for prescription, medical or hospital expenses can themselves be characterized as permitted "medical expenses" so as to permit the Applicant access to his locked-in funds to pay for such premiums.

It is the Tribunal's determination in the case of the Applicant that such premiums are such a permitted medical expense. The Applicant suffers from a host of serious and debilitating ailments that are chronic in nature. He has had frequent hospital stays, has undergone numerous surgical procedures and must take a variety of costly prescription medications. In the case of the Applicant, for the coming year, the Tribunal accepts that the costs that will be incurred by the Applicant to address his medical condition may exceed the cost of the

premium for coverage. To uphold the Superintendent's Notice of Proposal could as a consequence, require the Applicant to deplete his locked-in funds at a faster rate than otherwise required.

Accordingly, on the basis of the facts specific to the Applicant, and having regard to the open and non-exhaustive definition or list of "medical expenses," the Tribunal hereby directs the Superintendent to refrain from carrying out the Notice of Proposal dated December 21, 2001, and refers the matter of the Applicant's Application to the Superintendent for re-determination on the basis of this Order.

DATED at Toronto, this 20th day of June, 2002.

Martha Milczynski  
Chair, Financial Services Tribunal

## This image shows a single sheet of white paper with horizontal blue lines, typical of notebook paper. The lines are evenly spaced and run across the width of the page. In the bottom-left corner, there is a small, irregularly shaped piece of light-colored material, possibly a piece of tape or a torn edge from another sheet, which is partially visible. The rest of the page is blank except for the ruling lines.



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